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VOLUME 4

Part 2

1974 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
SECOND REPLACEMENT VOLUME 4 (PART 2) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING SECOND REPLACEMENT
VOLUME 4 (PART 2) THROUGH VOLUME 518
PACIFIC REPORTER (2ND SERIES)

Edited by

MALCOLM K. McCLINTICK, A.B., J.D.

and

THE PUBLISHERS' EDITORIAL STAFF

Editorial Supervisor

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana 46202



REVISED CODES OF MONTANA

VOLUME 4

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Indianapolis, Indiana

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SECOND REPLACEMENT (PART 2) OF

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TITLE 70—PUBLIC UTILITIES

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CHAPTER 1—PUBLIC SERVICE COMMISSION— REGULATION OF PUBLIC UTILITIES

Section

- 70-101. Creation of public service commission.
70-101.1. Public service commission districts.
70-111. Records and reports of commission.

70-101. (3879) Creation of public service commission. A public service commission is hereby created, whose duty it shall be to supervise and regulate the operations of the public utilities hereinafter named, such supervision and regulation to be in conformity with this act. The commission shall consist of five (5) members who shall be qualified electors of the district from which they are elected with each such member elected from a separate district of the state. At the next general election, there shall be elected five (5) commissioners for said commission except as hereinafter provided. Any commissioner whose term has not expired on the effective date of this act shall continue in office until the end of his term. Of the commissioners elected at the first election under this act, three (3) shall serve for a term of two (2) years, and two (2) for a term of four (4) years. At their first meeting the commissioners shall determine by lot which of them shall serve the terms less than four (4) years. Every term thereafter shall be for a period of four (4) years commencing from the expiration of the first term. Said commissioners when elected will qualify at the time and in the manner provided by law for other state officers, and shall take office on the first Monday of January, next after their election. Each of said members of said board so elected shall serve until his successor is elected and qualified. A chairman shall be selected by the commission from its membership at the first meeting of each year after a general election.

Any vacancy occurring in the board shall be filled by appointment by the governor, and such appointee shall hold office until the next general election, and until his successor is elected and qualified. At the biennial election following the occurrence of any vacancy in the board, there shall be elected one (1) member to fill out the unexpired term for which such vacancy exists.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R. C. M. 1921; amd. Sec. 1, Ch. 339, L. 1974.

Amendments

The 1974 amendment added the provisions pertaining to the election and terms of the members and filling vacancies in the board.

Jurisdiction of Commissioner

District court's writ of prohibition was vacated where it barred board of railroad commissioners, ex officio the public service commission, from performing its duties concerning water company's application to increase rates and charges.

State ex rel. Board of Railroad Commrs. v. District Court, 158 M 139, 488 P 2d 903.

Powers of Commission

Regulation of Montana public service commission limiting the liability of a telephone company arising from errors in or omissions of directory listings to the amount of charges for such of the subscriber's service as is affected during the period covered by the directory in which the error or omission occurs, is reasonable and binding on the subscriber. State ex rel. Mountain States Telephone & Telegraph Co. v. District Court, — M —, 503 P 2d 526.

70-101.1. Public service commission districts. In this state there are five (5) public service commission districts, with one (1) commissioner elected from each district distributed as follows:

First district: Blaine, Chouteau, Daniels, Dawson, Fergus, Garfield, Glacier, Golden Valley, Hill, Liberty, McCone, Musselshell, Petroleum, Phillips, Pondera, Prairie, Richland, Roosevelt, Sheridan, Toole, Valley, and Wibaux counties.

Second district: Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Rosebud, Stillwater, Sweetgrass, Treasure, and Yellowstone counties.

Third district: Broadwater, Cascade, Jefferson, Judith Basin, Lewis and Clark, Meagher, Teton, and Wheatland counties.

Fourth district: Beaverhead, Deer Lodge, Gallatin, Granite, Madison, Park, Powell, Ravalli, and Silver Bow counties.

Fifth district: Flathead, Lake, Lincoln, Mineral, Missoula, and Sanders counties.

History: En. 70-101.1 by Sec. 2, Ch. 339, L. 1974.

Title of Act

An act to amend Section 70-101, R. C. M. 1947, to provide for a five (5) member elected public service commission from five (5) districts apportioned on the basis of population; and repealing Sections 70-102 and 72-101, R. C. M. 1947; and providing for an effective date.

Repealing Clause

Section 3 of Ch. 339, Laws 1974 read "Sections 70-102 and 72-101, R. C. M. 1947, are repealed."

Transition

Section 4 of Ch. 339, Laws of 1974 read "This act shall not affect the current terms of commissioners. The incumbent commissioner whose present term of office extends beyond January 1, 1975, shall, within fifteen (15) days after the effective

date of this act, designate the district he will serve by written declaration filed with the secretary of state and he shall serve as commissioner from such designated district to the expiration of such term. A failure by such incumbent commissioner to so designate his district shall subject such commission office to be open to election. The other two incumbent commissioners shall continue to serve to the expiration of such terms without designation of district, provided however, that there shall be elected in the primary and general elections of 1974, four (4) commissioners from the four (4) commission districts open for election."

Effective Date

Section 5 of Ch. 339, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 28, 1974.

70-102. (3880) Repealed.**Repeal**

Section 70-102 (Sec. 2, Ch. 52, L. 1913), establishing the railroad commissioners as

ex officio public service commissioners, was repealed by Sec. 24, Ch. 315, Laws of 1974; Sec. 3, Ch. 339, Laws of 1974.

70-111. (3889) Records and reports of commission. The reports, records, accounts, files, papers, and memoranda of every nature in the possession of the public service commission are open to the public at reasonable times, subject to the exception that when the commission considers it necessary, in the interest of the public, it may withhold from the public any facts or information in its possession for a period of not more than ninety (90) days after the acquisition of the facts or information.

History: En. Sec. 9, Ch. 52, L. 1913; re-en. Sec. 3889, R. C. M. 1921; amd. Sec. 29, Ch. 93, L. 1969; amd. Sec. 7, Ch. 315, L. 1974.

tence requiring the commission to make reports as provided in section 82-4002 conforming to those of the railroad commission; substituted "public service commission" for "commission" after "possession of the"; and made minor changes in phraseology.

Amendments

The 1974 amendment deleted a first sen-

70-118. (3896) Repealed.**Repeal**

Section 70-118 (Sec. 16, Ch. 52, L. 1913; Sec. 1, Ch. 188, L. 1919), relating to em-

ploying an engineer and other help, and the commission secretary's salary, was repealed by Sec. 24, Ch. 315, Laws of 1974.

70-119. (3897) Complaints against public utility—hearing.**Jurisdiction**

This section gives agency jurisdiction to hold hearings concerning rate increases for utilities even though no increase could be

made at the time because of federal wage and price freeze. State ex rel. Department of Public Service Regulation v. District Court, 158 M 88, 488 P 2d 1147.

70-128. (3906) Action to set aside rates or charges fixed by commission.**Civil Rules**

Rules of Civil Procedure were not applicable to proceeding under this section,

being excepted by Rule 81. Public Service Comm. of Montana v. District Court, — M —, 511 P 2d 334.

**CHAPTER 2—MONTANA STATE BOARD OF FOOD DISTRIBUTORS EX OFFICIO
MONTANA TRADE COMMISSION—REGULATION OF PUBLIC MILLS**

(Repealed—Section 2, Chapter 256, Laws of 1973)

70-201 to 70-233. (3914 to 3946) Repealed.**Repeal**

Sections 70-201 to 70-233 (Sec. 2, p. 72, L. 1879; Secs. 3271, 3272, Pol. C. 1895; Secs. 1 to 31, Ch. 223, L. 1919; Sec. 1,

Ch. 123, L. 1943), relating to the Montana trade commission and the regulation of public mills, were repealed by Sec. 2, Ch. 256, Laws 1973.

**CHAPTER 3—TELEGRAPH, TELEPHONE AND ELECTRIC LIGHT
AND POWER LINES**

Section

70-304. Underground power lines in new service areas.

70-304. Underground power lines in new service areas. A firm, agency, or person exercising the rights conferred by section 70-301 shall install underground all lines used for the distribution of electricity in a new serv-

ice area when technically and economically feasible. As used in this section, "new service area" means any subdivision or group of newly constructed or newly installed dwellings (including mobile homes) or commercial buildings which, when occupied, will generate at least five contracts for the supply of electricity, and "lines used for the distribution of electricity" means all the distribution lines in the new service area through which electricity passes before it is utilized by the consumer and the consumer's dwelling or place of business. The public service commission may make rules to implement this section.

History: En. 70-304 by Sec. 1, Ch. 125, L. 1974.

Title of Act

An act requiring the underground installation of electric power distribution lines in new service areas.

CHAPTER 6—UNDERGROUND CONVERSION OF UTILITIES LAW

Section

70-626. Conversion costs.

70-626. Conversion costs. In determining the conversion costs included in the cost and feasibility report required by section 70-607, the public utility is entitled to amounts sufficient to repay them for the following, as computed and reflected by the uniform system of accounts approved by the public service commission, federal communications commission, or federal power commission, or if the public utility is not subject to regulation by any of the above governmental agencies, by the public utility's system of accounts then in use and in accordance with standard accounting procedures of the public utility.

1. * * * [Same as parent volume.]

2. The estimated costs of removing the overhead electric and communication facilities, less the salvage value of the facilities removed.

3. and 4. * * * [Same as parent volume.]

History: En. Sec. 26, Ch. 429, L. 1971; amd. Sec. 8, Ch. 315, L. 1974.

ence to "section 70-607" for reference to "section 70-626"; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted refer-

CHAPTER 7—CONSUMER COUNSEL

Section

70-701. Title and purpose of act.

70-702. Definitions.

70-703. Legislative consumer committee created—composition—terms—officers.

70-704. Meetings of committee—expenses of members reimbursed.

70-705. Appointment of consumer counsel—qualifications.

70-706. Staff of counsel.

70-707. Powers and duties of consumer counsel—annual report.

70-708. Subpoena to witness to appear before counsel.

70-709. Disposition of fees—quarterly report and fee from regulated companies—penalty for violation—evidence of violation.

70-710. Notice to be served on consumer counsel.

70-711. Notice to advise public of availability of consumer counsel.

70-701. Title and purpose of act. This act shall be known and may be cited as "The Consumer Counsel Act."

History: En. Sec. 1, Ch. 65, L. 1973.

counsel to comply with article XIII, section 2 of the 1972 Montana constitution.

Title of Act

An act to create the office of consumer

70-702. Definitions. As used in this act:

(1) "Committee" means the legislative consumer committee.

(2) "Commission" means the public service commission created in section 70-101, R.C.M. 1947.

(3) "Regulated companies" means all those organizations, corporations, associations, or other public or private entities which now are or may hereafter become subject to regulation in any manner by the department of public service regulation or the public service commission or any successor agency.

History: En. Sec. 2, Ch. 65, L. 1973.

70-703. Legislative consumer committee created—composition—terms—officers. (1) There is a legislative consumer committee consisting of two (2) members of the senate and two (2) members of the house of representatives.

(2) Members of the first committee shall be appointed within fifteen (15) days after the passage and approval of this act, in the same manner as standing committees of the respective houses are appointed. Subsequent members shall be appointed in the same manner before the sixtieth legislative day of the legislative session following the expiration of the terms of the members of the committee.

(3) Any person who is an employee, agent, officer, partner, or director of any regulated company, or who has served a regulated company in any capacity within the three (3) years previous to his appointment may not be a member of the committee.

(4) A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a legislator by the remaining members of the committee.

(5) No more than one (1) of the appointees of each house may be members of the same political party.

(6) A member shall serve until his term of office as a legislator ends and until his successor is appointed.

(7) The committee shall elect one (1) of its members as chairman and such other officers as it determines necessary.

History: En. Sec. 3, Ch. 65, L. 1973.

Compiler's Notes

The approval date of Ch. 65, Laws 1973 was February 25, 1973.

70-704. Meetings of committee—expenses of members reimbursed. The committee shall meet at least once each quarter to advise and consult with the consumer counsel. Committee members shall be reimbursed from the appropriation to the office of the consumer counsel for their actual and nec-

essary expenses incurred and an additional sum equal to a legislator's pay while attending such meetings.

History: En. Sec. 4, Ch. 65, L. 1973; ly" before "Meetings of committee" in
amd. Sec. 1, Ch. 341, L. 1974. the caption and inserted "at least" before
"once each quarter" in the first sentence.

Amendments

The 1974 amendment deleted "Quarter-

70-705. Appointment of consumer counsel—qualifications. The committee shall appoint a consumer counsel and set his salary. The consumer counsel shall have the following minimum qualifications and such additional qualifications as the committee determines appropriate:

- (1) a bachelor's degree or equivalent from an accredited college or university with a major or minor in accounting or allied fields;
- (2) be admitted to practice law in Montana courts and in the United States district court for the state of Montana.

History: En. Sec. 5, Ch. 65, L. 1973.

70-706. Staff of counsel. The consumer counsel may, with the approval of the committee, appoint employees and consultants necessary to carry out the provisions of this act, within the limits of legislative appropriation.

History: En. Sec. 6, Ch. 65, L. 1973.

70-707. Powers and duties of consumer counsel—annual report. The consumer counsel:

- (1) may appear at public hearings conducted by the commission, as the representative of the consuming public, on all matters which come before the commission which in any way affect the consuming public, and shall have all the rights and powers of any party in interest appearing before the commission regarding examination and cross-examination of witnesses, presentation of evidence and other matters;

- (2) may institute proceedings before the commission against regulated companies;

- (3) has all the investigatory powers necessary to perform his duties as provided herein and all discovery powers sanctioned by the Montana Rules of Civil Procedure and the Montana Administrative Procedure Act;

- (4) may examine in any commission proceedings under oath any officer, director, manager, or employee of any regulated company and inspect the business and corporate records of any regulated company in accordance with the law to aid in the exercise of his duties;

- (5) may institute, intervene in, or otherwise participate in appropriate proceedings in the state and federal courts and administrative agencies in the name of and on behalf of the utility and transportation consuming public of the state of Montana or substantial elements thereof including review of decisions rendered by, or failure to act by the commission.

- (6) shall meet and confer with members or representatives of the consuming public at such times and places as he determines appropriate;

(7) shall prepare and submit a yearly report and such other interim reports he determines advisable concerning his activities during the year and may recommend appropriate remedial legislation to the committee;

(8) has such other powers necessary to fully represent the interests of the consuming public before the commission as may be granted and promulgated by the committee in accordance with the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974.

Amendments

The 1974 amendment substituted "may" for "shall" at the beginning of subdivision (1); substituted "and all discovery powers sanctioned by the Montana Rules of Civil Procedure and the Montana Administrative Procedure Act" for "which

may be granted and promulgated by the committee in accordance with the provisions of the Montana Administrative Procedure Act" following "provided herein" in subdivision (3); and rewrote subdivision (5) which read: "May institute appropriate action in the state and federal courts in the name of the consuming public of the state of Montana for review of decisions rendered by the commission."

70-708. Subpoena to witness to appear before counsel. If any person is requested to appear with or without his records as a witness before the commission or to be examined under the provisions of this act, the consumer counsel or his delegate may apply to the clerk of court of the first judicial district of Montana or any judicial district for a subpoena commanding the appearance of the witness and his records if requested. It is the duty of the clerk to issue the subpoena and the duty of any peace officer to serve the same. Disobedience of a subpoena issued under the provisions of this act is contempt of court and shall be punished accordingly.

History: En. Sec. 8, Ch. 65, L. 1973.

70-709. Disposition of fees—quarterly report and fee from regulated companies—penalty for violation—evidence of violation. (1) There is an account in the earmarked revenue fund to which all fees collected hereunder shall be deposited and from which all appropriations to the office of the consumer counsel shall be paid.

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall, within 90 days after the close of each calendar quarter, file with the department of public service regulation and the department of revenue a statement in such form as the commission may determine, showing the gross operating revenue from all activities regulated by the commission within the state for that calendar quarter of operation or portion thereof, and shall at that time pay to the department of revenue a fee based on a fraction of the gross operating revenue reported, as determined by the department of revenue under subsection (3) of this section.

(3) Within thirty (30) days following enactment of the legislative appropriation for the office of the consumer counsel, the department of revenue shall:

(a) determine the total gross operating revenue generated by all regulated activities within this state for all regulated companies, for the previous fiscal year,

(b) compute the percentage of the amount determined in subsection (3) (a) which will produce an amount equal to the appropriation to the consumer counsel for each year of the appropriation, except that no regulated company owned and operated by any municipal corporation within this state shall be required to pay a sum in excess of six-hundredths of one per cent (.06 of 1%) of its gross operating revenue, and

(c) give notice by mail to each regulated company of the percentage determined in subsection (3) (a) and (b) to be applied to the gross operating revenue reported under subsection (2) above, to determine the amount of the fee to be paid in each year of the appropriation.

(4) In the event the fee charged in any one (1) year of the biennium is in excess of the amount actually expended in that year, the excess shall be deducted from the amount required for the first year of the next biennial appropriation before the determination for that year required by subsection (3) (a) of this act is made.

(5) Any regulated company, or any officer or employee of any regulated company, who, with intent to evade any fee or any requirement of this act or any lawful requirement of the commission thereunder, fails to pay the fee, or to make, render, sign or verify any statement, or to supply any information, within the time required by or under the provisions of this act, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent statement, or supplies any false or fraudulent information, shall be liable to a penalty of not more than one thousand dollars (\$1,000), to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed one thousand dollars (\$1,000) or be imprisoned in the county jail not to exceed one (1) year, or both, at the discretion of the court.

(6) The certificate of the department of revenue to the effect that a fee has not been paid, that a report has not been filed, or that information has not been supplied, as required by or under the provisions of this act, shall be prima facie evidence that such fee has not been paid, that such statement has not been filed, or that such information has not been supplied.

History: En. Sec. 9, Ch. 65, L. 1973;
amd. Sec. 1, Ch. 319, L. 1974.

Separability Clause

Section 10 of Ch. 65, Laws 1973 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Amendments

The 1974 amendment added the exception at the end of subdivision (3)(b) and inserted the reference to subdivision (3) (b) in subdivision (3)(c).

70-710. Notice to be served on consumer counsel. In addition to all other forms of notice of hearings conducted by the commission provided for in this title, notices of all hearings shall be served upon the Montana consumer counsel.

History: En. 70-710 by Sec. 1, Ch. 212,
L. 1974.

Title of Act

An act to provide for the giving of notice of public hearings regarding the

regulation of utilities to the Montana consumer counsel; and for making reference to the availability of the Montana con-

sumer counsel in notices of hearings by adding the following sections to Title 70, R. C. M. 1947.

70-711. Notice to advise public of availability of consumer counsel. All forms of notice of public hearings conducted by the public service commission under this title, including all notices posted in public places or published in the legal advertising sections of newspapers, shall advise members of the consuming public of the existence of the office of the Montana consumer counsel and its availability to function on behalf of members of the consuming public.

History: En. 70-711 by Sec. 2, Ch. 212, L. 1974.

CHAPTER 8—UTILITY SITES

Section

- 70-801. Short title.
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- 70-819. Enforcement of act by residents of state—statement of failure to enforce act—mandamus—private suits for damages.
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- 70-821. Penalties for violation of act—civil action by attorney general.
- 70-822. Grants, gifts and funds.
- 70-823. Act supersedes other laws or regulations.

70-801. Short title. This act may be cited as the Montana Utility Siting Act of 1973.

History: En. Sec. 1, Ch. 327, L. 1973.

Title of Act

An act to vest in the department and board of natural resources and conservation the authority to require and review long-range planning by certain utilities, to

give approval to energy generation and conversion plant sites and associated facilities, to require preconstruction certification of such facilities; providing penalties for violation of this act; and providing an effective date.

70-802. Policy and legislative findings. It is the constitutionally declared policy of this state to maintain and improve a clean and healthful

environment for present and future generations; to protect the environmental life support system from degradation and prevent unreasonable depletion and degradation of natural resources; and to provide for administration and enforcement to attain these objectives.

The legislature finds that the construction of additional power and energy conversion facilities may be necessary to meet the increasing need for electricity and other energy, and that such facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction and operation of power and energy conversion facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that no power or energy conversion facility shall hereafter be constructed or operated within this state without a certificate of environmental compatibility and public need acquired pursuant to this act.

History: En. Sec. 2, Ch. 327, L. 1973.

70-803. Definitions. The following words, when used in this act, shall have the following meanings unless otherwise clearly apparent from the context:

(1) the word "department" means the department of natural resources and conservation.

(2) the word "board" means the board of natural resources and conservation.

(3) the words "utility facility" or "facility" mean:

(a) any energy-generating and conversion plant and associated facilities

(i) designed for, or capable of, generating at fifty (50) megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(ii) designed for, or capable of, producing one hundred million (100,000,000) cubic feet of gas per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(iii) designed for, or capable of, producing fifty thousand (50,000) barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(iv) designed for or capable of enriching uranium minerals;

(b) an electric transmission line and associated facilities of a design capacity of thirty-four and one-half (34.5) kilovolts or more, except that the following transmission lines and associated facilities shall be subject to certain exceptions under the act:

(i) a transmission line and associated facilities with a design capacity of sixty-nine (69) kilovolts or less and which will be constructed above ground for a distance of ten (10) miles or less shall not be considered a utility facility within the definitions of this act,

(ii) a transmission line and associated facilities with a design capacity of one hundred sixty-one (161) kilovolts or less and which will be constructed underground for a distance of five (5) miles or less shall not be considered a utility facility within the definitions of this act,

(iii) a transmission line or associated facilities of a design capacity of one hundred sixty-one (161) kilovolts or less which does not meet the requirements of subsections (i) and (ii) of this subsection shall be subject to the specific time review requirements for transmission lines in section 6, subsection (1) [70-806(1)] and section 7, subsection (1) [70-807(1)] of this act if the proposed length of the transmission line will not exceed thirty (30) miles,

(iv) unless specifically covered by subsections (i), (ii) or (iii) of this subsection, the construction of all transmission lines and associated facilities shall be subject to the two (2) year time requirement of section 6, subsection (1) [70-806(1)], and the six hundred (600) day requirement of section 7, subsection (1) [70-807(1)],

(v) the provisions of subsections (i) and (ii) of this subsection shall not be construed as authorizing the simultaneous construction of two (2) or more transmission lines serving the same community or customer which would, when constructed separately, come within the exceptions of subsections (i) and (ii) ;

(c) a gas or liquid transmission line and associated facilities designed for, or capable of, transporting gas or liquid hydrocarbon products from a gasification or liquefaction facility of the size indicated in subsections (a)(ii) and (a)(iii) of this section.

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use or conversion of energy.

(4) the words "associated facilities" include, but are not limited to, transportation links of any kind, aqueducts, diversion dams and any other device or equipment associated with the production, or delivery of the energy form produced by a facility.

(5) the words "commence to construct" mean :

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a utility facility, but do not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions. The words do include the commencement of eminent domain proceedings under Title 93, chapter 99, R. C. M. 1947, for land or rights of way upon which a utility facility may be constructed.

(b) the fracturing of underground formations by any means, if any such activity is related to the possible future development of an underground utility facility employing geothermal resources, but do not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation.

(6) the word "municipality" means any county or municipality within this state.

(7) the word "person" includes any individual, group, firm, partnership, corporation, co-operative, association, government subdivision, government agency, local government, or other organization.

(8) the words "public utility" or "utility" mean any person engaged in any aspect of the production, storage, sale, delivery or furnishing of heat, electricity, gas, or energy in any form for ultimate public use.

(9) "certificate" means the certificate of environmental compatibility and public need issued by the board and required for the construction or operation of any facility.

History: En. Sec. 3, Ch. 327, L. 1973; amd. Sec. 1, Ch. 231, L. 1974; amd. Sec. 1, Ch. 268, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 231 and once by Ch. 268. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 231, Laws of 1974, added the

last sentence of subdivision (5)(a) to include the commencement of eminent domain proceedings within the meaning of "commence to construct."

Chapter 268, Laws of 1974, added subdivision (3)(d); inserted the subdivision designation (a) in subsection (5); and added subdivision (5)(b).

Effective Date

Section 2 of Ch. 231, Laws 1974 provided the act should be effective from and after its passage and approval. Approved March 16, 1974.

70-804. Certificate from board required prior to construction of utility facility. (1) No person shall commence to construct a utility facility in the state without first having obtained a certificate issued with respect to such facility by the board. Any facility, with respect to which a certificate is required, shall thereafter be constructed, operated and maintained in conformity with such certificate and any terms, conditions and modifications contained therein. A certificate may only be issued pursuant to this act.

(2) A certificate may be transferred, subject to the approval of the department, to a person who agrees to comply with the terms, conditions and modifications contained therein.

(3) This act shall not apply to any utility facility over which an agency of the federal government has exclusive jurisdiction.

History: En. Sec. 4, Ch. 327, L. 1973.

70-805. Surcharge on electric energy producer's license tax—administrative expenses—tax on gasification, liquefaction, uranium enrichment facilities. Every "producer" as defined in chapter 16 of Title 84, the electrical energy producers' license tax, shall, in addition to the sum required to be paid by that act, pay an additional twenty-five hundredths percent (0.25%) of the gross amount as shown on the statement which is required by that act, in the same manner and within the time provided by that act. The director of revenue shall report to the state treasurer separately the amount transmitted to the state treasurer which is added to the electrical energy producers' license tax by this section of this act.

The legislature shall appropriate sufficient funds to finance the department's activities in carrying out its duties under this act. The legislature

shall provide a tax on gasification, liquefaction and uranium enrichment facilities sufficient to produce an amount of revenue equal to that derived from electrical energy producers under this section.

History: En. Sec. 5, Ch. 327, L. 1973.

70-806. Application for certification—filing and contents—fees—use of filing fees—proof of service on municipalities—waiver of time requirement.

(1) At least two (2) years prior to anticipated commencement of construction of a utility facility as defined in sections 70-803(3)(a), 70-803(3)(b)(iv), 70-803(3)(c), and 70-803(3)(d) and at least nine (9) months prior to the anticipated commencement date of the construction of a utility facility as defined in section 70-803(3)(b)(iii), an applicant for a certificate shall file with the department an application, in such form as the department may prescribe, containing the following information:

(a) a description of the location and of the utility facility to be built thereon;

(b) a summary of any studies which have been made of the environmental impact of the facility;

(c) a statement explaining the need for the facility;

(d) a description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility; and

(e) such other information as the applicant may consider relevant or as the department may by regulation or order require. A copy or copies of the studies referred to in clause (b) above shall be filed with the department, if ordered, and shall be available for public inspection.

(2) A filing fee shall be deposited in the state general fund. Said fee shall be based upon the estimated cost of the facility according to the declining scale which follows. The applicant shall pay the accumulated sums calculated as follows: three per cent (3%) of any estimated cost up to one million dollars (\$1,000,000); plus one per cent (1%) of any estimated cost over a million dollars and up to twenty million dollars (\$20,000,000); plus one-half of one per cent (0.5%) of any estimated cost over twenty million dollars (\$20,000,000) and up to one hundred million dollars (\$100,000,000); plus one-quarter of one per cent (0.25%) of any amount of estimated cost over one hundred million (\$100,000,000) and up to three hundred million dollars (\$300,000,000); plus one-tenth of one per cent (0.1%) of any amount of estimated cost over three hundred million dollars (\$300,000,000). It is the intent of the legislature that the revenues derived from the filing fee be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its other responsibilities under this act.

(3) Each application shall be accompanied by proof of service of a copy of such application on the chief executive officer of each municipality and the head of each government agency, charged with the duty of protecting the environment or of planning land use, in the area in which any portion of such facility is to be located, both as primarily and as

alternatively proposed. The copy of such application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(4) Each application shall also be accompanied by proof that public notice thereof was given to persons, residing in the municipalities entitled to receive notice under subsection (3) of this section, by the publication of a summary of the application, and the date on or about which it is to be filed, in such newspapers as will serve substantially to inform such persons of the application.

(5) Inadvertent failure of service on, or notice to, any of the municipalities, government agencies or persons identified in subsections (3) and (4) of this section may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding. In addition, the department may, after filing, require the applicant to serve notice of the application or copies thereof or both upon such other persons, and file proof thereof, as the department may deem appropriate.

(6) An application for an amendment of a certificate shall be in such form and contain such information as the department shall prescribe. Notice of such an application shall be given as set forth in subsections (3) and (4) of this section.

(7) The board may waive compliance with the time limit of this section if an applicant makes a clear and convincing showing that an immediate need for a facility exists and that the applicant did not have knowledge that the need existed sufficiently in advance of the need to file an application within the time provided in subsection (1) of this section.

(8) The board may, in its discretion, waive the necessity of filing an application where utility facilities are being relocated pursuant to sections 32-2414 through 32-2416, R. C. M. 1947, and where it is satisfied after an examination of the environmental impact statement filed pursuant to chapter 65 of Title 69, R. C. M. 1947, that such relocation will not significantly affect the environment.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974.

a composite section embodying the changes made by both amendments.

Amendments

Chapter 115, Laws of 1974, added subsection (8).

Chapter 268, Laws of 1974, substituted references to "70-803(3)(a), 70-803(3)(b)(iv), 70-803(3)(c), and 70-803(3)(d)" and to "70-803(3)(b)(ii)" in subsection (1) for references to "3(3)(a), 3(3)(b)(iv), and to "3(c)" and "3(3)(b)(ii)."

Compiler's Notes

This section was amended twice in 1974, once by Ch. 115 and once by Ch. 268. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made

70-807. Study, evaluation and report on proposed facility—application for amendment of certificate—hearings. (1) Upon receipt of an application complying with section 70-806, the department shall commence an intensive study and evaluation of the proposed facility and its effects, pursuant to section 70-816 of this act. Within six hundred (600) days following receipt of the application for a facility as defined in sections 70-

803(3)(a), 70-803(b)(iv), 70-803(3)(c), 70-803(3)(d) and within one hundred eighty (180) days for a facility as defined in sections 70-803(b)(iii) the department shall make a report to the board, which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation pursuant to section 70-816 of this act and the final environmental impact statement.

The departments of health and environmental sciences, highways, intergovernmental relations, fish and game, and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. Such information may include opinions as to the advisability of granting or denying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.

(2) On an application for an amendment of a certificate, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility other than as provided in the alternates set forth in the application.

(3) Upon receipt of the department's report submitted under subsection (1) of this section, the board shall set a hearing date not more than sixty (60) days after such receipt.

History: En. Sec. 7, Ch. 327, L. 1973; En. Sec. 3, Ch. 268, L. 1974. ences to Montana code section numbers for references to section numbers of the 1973 act.

Amendments

The 1974 amendment substituted refer-

X 70-808. Parties to certification proceeding—waiver by failure to participate. (1) The parties to a certification proceeding include:

- (a) the applicant;
- (b) each municipality and government agency entitled to receive service of a copy of the application under subsection (3) of section 6 [70-806 (3)] of this act; and
- (c) any person residing in a municipality entitled to receive service of a copy of the application under subsection (4) of section 6 [70-806 (4)] of this act; any nonprofit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located; or any other interested person; and
- (d) the department. DNR

(2) Any party identified in subparagraphs (b) and (c) of subsection (1) of this section waives his right to be a party if he does not participate orally at the hearing.

History: En. Sec. 8, Ch. 327, L. 1973.

70-809. Record of hearing—procedure—rules of evidence. Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, which any party wishes the board to consider or which the board itself expects to utilize or rely upon, shall be made a part of the record; a record shall be made of the hearing and of all testimony taken; and the contested case procedures of the Montana Administrative Procedure Act [82-4201 to 82-4225] shall apply to the hearing, except that neither common law nor statutory rules of evidence need apply, but the board may make rules designed to exclude repetitive, redundant or irrelevant testimony.

History: En. Sec. 9, Ch. 327, L. 1973.

70-810. Decision of board—findings necessary for certificate—conditions imposed—service of decision on parties. (1) The board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation or maintenance of the utility facility as the board may deem appropriate. The board may not grant a certificate either as proposed or as modified by the board unless it shall find and determine:

- (a) the basis of the need for the facility;
- (b) the nature of the probable environmental impact;
- (c) that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;
- (d) each of the criteria listed in section 16 [70-816] of this act;
- (e) in the case of an electric, gas or liquid transmission line or aqueduct, what part, if any, of the line or aqueduct shall be located underground; that such facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and that such facilities will serve the interests of utility system economy and reliability;
- (f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, such law or regulation is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of the directly affected government subdivisions;
- (g) that the facility will serve the public interest, convenience and necessity; and
- (h) that duly authorized state air and water quality agencies have certified that the proposed facility will not violate state and federally established standards and implementation plans; the judgments of duly authorized air and water quality agencies are conclusive on all questions related to the satisfaction of state and federal air and water quality standards.

(2) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon

such modification, provided that the municipalities, and persons residing therein, affected by the modification, shall have been given reasonable notice of the modification.

(3) A copy of the decision and any opinion issued with the decision shall be served upon each party.

History: En. Sec. 10, Ch. 327, L. 1973.

70-811. Opinion issued with decision—contents of certificate—waiver of time requirements—facilities for which certificate required. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken. If the board has found that any regional or local law or regulation, which would be otherwise applicable, is unreasonably restrictive pursuant to paragraph (f) of subsection (1) of section 10 [70-810 (1)(f)] of this act, it shall state in its opinion the reasons therefor.

(2) Any certificate issued by the board shall include the following:

(a) An environmental evaluation statement related to the facilities being certified. The statement shall include, but not be limited to, analysis of the following information:

- (i) the environmental impact of the proposed facility;
- (ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;
- (iii) problems and objections raised by other federal and state agencies and interested groups;
- (iv) alternatives to the proposed facilities; and
- (v) a plan for monitoring environmental effects of the proposed facility.

(b) A statement signed by the applicant showing agreement to comply with the requirements of this act and the conditions of the certificate.

(3) The time requirement of section 6 [70-806] and any of the provisions described in sections 7 through 11 [70-807 to 70-811] of this act may be waived by the board, for good cause shown with respect to applications filed before January 1, 1975. Applications for certificates under this subsection (3) must be promptly filed. A certificate is not required under this act for facilities under construction or in operation on January 1, 1973. However, a certificate must be obtained for associated facilities upon which construction has not commenced before January 1, 1973, subject to the waiver provisions of this subsection.

History: En. Sec. 11, Ch. 327, L. 1973.

70-812. Review of denial of certificate by board—procedure. (1) Any party as defined in section 8 [70-808] of this act aggrieved by the final decision of the board on an application for a certificate, may obtain judicial review by the filing of a petition in a state district court of competent jurisdiction within thirty (30) days after the issuance of such final decision. Upon receipt of such petition, the department shall deliver to the court a copy of the written transcript of the record of the proceeding before it and a copy of the board's decision and opinion entered therein which shall constitute the record on judicial review. A copy of such transcript,

decision and opinion shall remain on file with the department and shall be available for public inspection.

(2) If a decision is issued after a hearing on an application for a certificate, such decision is final for purposes of judicial review. The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act [82-4201 to 82-4225].

History: En. Sec. 12, Ch. 327, L. 1973.

70-813. Jurisdiction of courts restricted. Except as expressly set forth in sections 12, 17 and 21 [70-812, 70-817 and 70-821] of this act, no court of this state shall have jurisdiction to hear or determine any issue, case or controversy concerning any matter which was or could have been determined in a proceeding before the board under this act or to stop or delay the construction, operation or maintenance of a utility facility except to enforce compliance with this act or the provisions of a certificate issued hereunder pursuant to sections 19 or 21 [70-819 or 70-821] of this act.

History: En. Sec. 13, Ch. 327, L. 1973.

70-814. Annual long-range plan submitted—contents—available to public. (1) Each utility shall furnish annually to the department for its review, a long-range plan for the construction and operation of utility facilities. Such plan shall be submitted on April 1 of each year. The plan shall include the following:

(a) the general location, size and type of all utility facilities to be owned and operated by the utility whose construction is projected to commence during the ensuing ten (10) years, as well as those facilities to be removed from service during the planning period;

(b) a description of efforts by the utility to co-ordinate the plan with other utilities so as to provide a co-ordinated regional plan for meeting the utility needs of the region;

(c) a description of the efforts to involve environmental protection and land-use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility and explanation of the basis for such projections, and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this act.

(2) The plan shall be made available to the public by the department, and the utility shall be required to give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of health and environmental science, the department of highways, the department of public service regulation, the department of state lands and the department of intergovernmental relations. Citizen

environmental protection and resource planning groups, and other interested persons may obtain a plan by written request and payment therefor.

History: En. Sec. 14, Ch. 327, L. 1973.

70-815. Study of planned facilities included in annual long-range report. If a utility lists and identifies a proposed utility facility in its plan, submitted pursuant to section 14 [70-814] of this act, as one on which construction is proposed to be commenced within the five (5) year period next proceeding submission of the plan, the department shall commence examination and evaluation of the site to determine whether construction of the proposed facility would unduly impair the environmental values in section 16 [70-816] of this act. This study may be continued until such time as a utility files an application for a certificate under section 6 [70-806] of this act. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate.

History: En. Sec. 15, Ch. 327, L. 1973.

70-816. Environmental factors considered in evaluating long-range plans. In evaluating long-range plans, conducting five-year site reviews, and evaluating applications for certificates of site and facility, the board and department shall give consideration to the following list of environmental factors and may, by regulation, add to the categories of this section:

- (1) Energy needs.
 - (a) Growth in demand and projections of need.
 - (b) Availability and desirability of alternative sources of energy.
 - (c) Availability and desirability of alternative sources of energy in lieu of the proposed facility.
 - (d) Promotional activities of the utility which may have given rise to the need for this facility.
 - (e) Socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality.
 - (f) Conservation activities which could reduce the need for more energy.
 - (g) Research activities of the utility of new technology available to it which might minimize environmental impact.
- (2) Land-use impacts.
 - (a) Area of land required and ultimate use.
 - (b) Consistency with area-wide state and regional land-use plans.
 - (c) Consistency with existing and projected nearby land use.
 - (d) Alternative uses of the site.
 - (e) Impact on population already in the area; population attracted by construction or operation of the facility itself; impact of availability of energy from this facility on growth patterns and population dispersal.
 - (f) Geologic suitability of the site or route.
 - (g) Seismologic characteristics.
 - (h) Construction practices.
 - (i) Extent of erosion, scouring, wasting of land—both at site and as a result of fossil fuel demands of the facility.

- (j) Corridor design and construction precautions for transmission lines or aqueducts.
- (k) Scenic impacts.
- (l) Effects on natural systems, wildlife, plant life.
- (m) Impacts on important historic architectural, archeological, and cultural areas and features.
- (n) Extent of recreation opportunities and related compatible uses.
- (o) Public recreation plan for the project.
- (p) Public facilities and accommodation.
- (q) Opportunities for joint use with energy intensive industries, or other activities to utilize the waste heat from facilities.
- (3) Water resources impacts.
 - (a) Hydrologic studies of adequacy of water supply and impact of facility on stream flow, lakes and reservoirs.
 - (b) Hydrologic studies of impact of facilities on ground water.
 - (c) Cooling system evaluation including consideration of alternatives.
 - (d) Inventory of effluents including physical, chemical, biological, and radiological characteristics.
 - (e) Hydrologic studies of effects of effluents on receiving waters, including mixing characteristics of receiving waters, changed evaporation due to temperature differentials, and effect of discharge on bottom sediments.
 - (f) Relationship to water quality standards.
 - (g) Effects of changes in quantity and quality on water use by others, including both withdrawal and in situ uses; relationship to projected uses; relationship to water rights.
 - (h) Effects on plant and animal life, including algae, macroinvertebrates, and fish population.
 - (i) Effects on unique or otherwise significant ecosystems; e.g., wetlands.
 - (j) Monitoring programs.
- (4) Air quality impacts.
 - (a) Meteorology. Wind direction and velocity, ambient temperature ranges, precipitation values, inversion occurrence, other effects on dispersion.
 - (b) Topography. Factors affecting dispersion.
 - (c) Standards in effect and projected for emissions, design capability to meet standards.
 - (d) Emissions and controls.
 - (i) Stack design.
 - (ii) Particulates.
 - (iii) Sulfur Oxides.
 - (iv) Oxides of Nitrogen.
 - (v) Heavy metals, trace elements, radioactive materials and other toxic substances.
 - (e) Relationship to present and projected air quality of the area.
 - (f) Monitoring program.
- (5) Solid wastes impact.
 - (a) Solid waste inventory.

- (b) Disposal program.
- (c) Relationship of disposal practices to environmental quality criteria.
- (d) Capacity of disposal sites to accept projected waste loadings.
- (6) Radiation impacts.
- (a) Land-use controls over development and population.
- (b) Wastes and associated disposal program for solid, liquid, radioactive and gaseous wastes.
- (c) Analyses and studies of the adequacy of engineering safeguards and operating procedures.
- (d) Monitoring. Adequacy of devices and sampling techniques.
- (7) Noise impacts.
- (a) Construction period levels.
- (b) Operational levels.
- (c) Relationship of present and projected noise levels to existing and potential stricter noise standards.
- (d) Monitoring. Adequacy of devices and methods.

History: En. Sec. 16, Ch. 327, L. 1973.

70-817. Additional requirements by other governmental agencies not permitted after issuance of certificate—exceptions. Notwithstanding any other provision of law, no state or regional agency, or municipality or other local government may require any approval, consent, permit, certificate or other condition for the construction, operation or maintenance of a utility facility authorized by a certificate issued pursuant to the provisions of this act; except that the state air and water quality agency or agencies shall retain authority which they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards. Nothing in this act shall prevent the application of state laws for the protection of employees engaged in the construction, operation or maintenance of such facility.

History: En. Sec. 17, Ch. 327, L. 1973.

70-818. Revocation or suspension of certificate. A certificate may be revoked or suspended:

- (1) for any material false statement in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted the board's refusal to grant a certificate; or
- (2) for failure to maintain safety standards or to comply with the terms or conditions of the certificate; or
- (3) for violation of the provisions of this act, the regulations issued thereunder, or orders of the board or department.

History: En. Sec. 18, Ch. 327, L. 1973.

70-819. Enforcement of act by residents of state—statement of failure to enforce act—mandamus—private suits for damages. (1) A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or em-

ployee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark. If the court finds that a requirement of this act or a rule adopted under this act is not being enforced, the court may order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a utility to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from the operation of a utility facility.

History: En. Sec. 19, Ch. 327, L. 1973.

70-820. Adoption of rules—monitoring of facilities. (1) The board and department may adopt rules implementing the provisions of this act.

(2) The board and the department shall have continuing authority and responsibility for monitoring the operations of all certificated facilities, for assuring continuing compliance with this act and certificates issued hereunder, and for discovering and preventing noncompliance with this act and such certificates.

(3) The board shall adopt rules requiring every person who proposes to gather geological data by boring of test holes or other underground exploration, investigation, or experimentation, related to the possible future development of an underground utility facility employing geothermal resources, to comply with the following requirements:

- (a) Notify the department of the proposed action;
- (b) Submit to the department a description of the area involved;
- (c) Submit to the department a statement of the proposed activities to be conducted and the methods to be utilized;
- (d) Submit to the department geological data reports at such times as may be required by the rules; and
- (e) Submit such other information as the board may require in the rules.

History: En. Sec. 20, Ch. 327, L. 1973;
amd. Sec. 4, Ch. 268, L. 1974.

Amendments

The 1974 amendment added subsection (3).

70-821. Penalties for violation of act—civil action by attorney general.
(1) Whoever

(a) without first obtaining a certificate of site and facility required under section 4 [70-804], commences to construct or operate a utility facility after the effective date of this act; or

(b) having first obtained a certificate of site and facility, constructs, operates or maintains a utility facility other than in compliance with the certificate; or

(c) causes any of the aforementioned acts to occur; shall be liable to a civil penalty of not more than ten thousand dollars (\$10,000) for each violation. Each day of a continuing violation shall constitute a separate offense. The penalty shall be recoverable in a civil suit brought by the attorney general on behalf of the state in the first district court of Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than ten thousand dollars (\$10,000) for each violation or imprisoned for not more than one (1) year, or both. Each day of a continuing violation shall constitute a separate offense.

(3) In addition to any penalty provided in subsections (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it shall refer the matter to the attorney general who may bring a civil action on behalf of the state in the first district court of Montana for injunctive or other appropriate relief against the violation and to enforce the act or a certificate issued hereunder, and upon a proper showing a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

(4) All fines collected shall be deposited in the state general fund.

History: En. Sec. 21, Ch. 327, L. 1973.

Compiler's Notes

Chapter 327, Laws 1973 became effective March 16, 1973.

70-822. Grants, gifts and funds. The department shall have authority to receive grants, gifts and other funds from any public or private source, to assist in its activities under this act.

History: En. Sec. 22, Ch. 327, L. 1973.

70-823. Act supersedes other laws or regulations. This act supersedes other laws or regulations. If any provision of this act is in conflict with any other law of this state, or any rule or regulation promulgated thereunder, this act shall govern and control, and such other law, rule or regulation shall be deemed superseded for the purpose of this act.

History: En. Sec. 23, Ch. 327, L. 1973.

sion to other persons or circumstances, is not affected."

Separability Clause

Section 24 of Ch. 327, Laws 1973 read "If any provision of this act, or its application to any person is held invalid, the remainder of the act, or the application of the provi-

Effective Date

Section 25 of Ch. 327, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 16, 1973.

TITLE 71—PUBLIC WELFARE AND RELIEF

Chapter

1. County poor, 71-106.
2. State department of social and rehabilitation services—county departments of public welfare, 71-201.1, 71-210, 71-210.1 to 71-210.3, 71-218, 71-222, 71-223, 71-228, 71-229, 71-233.1 to 71-233.5, 71-235, 71-236, 71-246.1, 71-247.
3. General relief, 71-302.2, 71-306 to 71-308.
5. Aid to dependent children, 71-501, 71-511.
7. Child welfare, 71-708, 71-709.
10. Public Welfare Act part 9—to provide for payments to persons having silicosis, 71-1003, 71-1004, 71-1008, 71-1010.
11. Sale of real property held by public welfare department, Repealed—Section 52, Chapter 121, Laws of 1974.
12. Permanently and totally disabled persons in need, Repealed—Section 1, Chapter 210, Laws of 1974.
14. Services to the blind, 71-1401, 71-1404, 71-1407.
15. Medical assistance, 71-1516, 71-1517, 71-1520, 71-1524.
18. Program for adoption of hard-to-place children, 71-1801 to 71-1805.
19. Protective services for developmentally disabled, 71-1901 to 71-1913.
20. Community homes for developmentally disabled, 71-2001 to 71-2007.
21. Vocational rehabilitation and education, 71-2101 to 71-2108.
22. Veterans' welfare, 71-2201 to 71-2207.
23. Problems of aging, 71-2301, 71-2302.

CHAPTER 1—COUNTY POOR

Section

71-106. Support of poor and indigent persons—tax levy.

71-106 (4465.4) Support of poor and indigent persons—tax levy. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To provide for the care and maintenance of the indigent sick, except as otherwise provided in other parts of this act, or the otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same, and for said purposes to levy and collect annually a tax on property not exceeding thirteen and one-half (13½) mills, which levy shall be made at the time other tax levies are made on property, as provided by law.

History: En. Subd. 5, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 165, L. 1941; amd. Sec. 1, Ch. 23, L. 1943; amd. Sec. 11, Ch. 212, L. 1965; amd. Sec. 1, Ch. 69, L. 1967; amd. Sec. 2, Ch. 279, L. 1974. See history of Sec. 16-1001.

Amendments

The 1974 amendment reduced the maximum tax from seventeen to thirteen and one-half mills.

71-114. (4530) Repealed.

Repeal

Section 71-114 (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.), relating to county's duties in care of the illness or

Repealing Clause

Section 3 of Ch. 279, Laws 1974 read "Sections 71-1519 and 71-1522, R. C. M. 1947, are repealed."

Effective Date

Section 4 of Ch. 279, Laws 1974 read "This act shall become effective July 1, 1974."

death of a nonresident of the county, was repealed by Sec. 3, Ch. 225, Laws of 1974.

71-116, 71-117. (4532, 4533) Repealed.**Repeal**

Sections 76-116 and 76-117 (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; Sec. 2, Ch. 91, L. 1931; Secs. 2, 3, Ch. 19, Ex. L. 1933), relating to a county's

payment for moving an applicant for care to the county of his residence and the provision of temporary relief to a non-resident, were repealed by Sec. 3, Ch. 225, Laws of 1974.

CHAPTER 2—STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES—COUNTY DEPARTMENTS OF PUBLIC WELFARE

Section

71-201.1. Definition.

71-210. Authority and activities of the state department.

71-210.1. Public assistance personnel.

71-210.2. Authority to provide supplementary payments from state funds.

71-210.3. Rules and regulations concerning supplementary payments.

71-218. Department—functions.

71-222. Millage taxes to be levied—expenditures—budgets.

71-223. Right of appeal.

71-228. Revocation of assistance.

71-229. Assistance not assignable nor subject to legal process.

71-233.1. Investigations by department of revenue—enforcement actions.

71-233.2. Co-operation of governmental agencies with department of revenue.

71-233.3. Information made available to department of revenue.

71-233.4. Nondisclosure of information resulting from investigation—violation of disclosure provisions by employees.

71-233.5. Definitions.

71-235. Living relatives—jointly and severally liable—scale of contribution.

71-236. Investigation of relatives' state income tax returns—return prima facie evidence of income—penalty for disclosing contents of return.

71-246.1. Liens released.

71-247. Recovery from the estate of a decedent—claim for assistance paid.

71-201. Repealed.**Repeal**

Section 71-201 (Sec. 1, Part 1, Ch. 82, L. 1937), relating to creation of the de-

partment of public welfare, was repealed by Sec. 52, Ch. 121, Laws of 1974.

71-201.1. Definition. Unless the context requires otherwise, in Title 71:

(1) "State department" means the department of social and rehabilitation services provided for in Title 82A, chapter 19.

(2) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

History: En. 71-201.1 by Sec. 19, Ch. 121, L. 1974.

revision of the laws relating to the department of social and rehabilitation services.

Title of Act

An act for the codification and general

71-202 to 71-206. Repealed.**Repeal**

Sections 71-202 to 71-206 (Sec. 2, Subds. (a) to (e), Sec. 3, Part 1, Ch. 82, L. 1937; Sec. 1, Ch. 129, L. 1939; Sec. 1, Ch. 117, L. 1941; Sec. 1, Ch. 199, L. 1951; Sec. 1, Ch. 26, L. 1953; Sec. 1, Ch. 117, L. 1957; Secs. 29, 30, Ch. 177, L. 1965;

Sec. 1, Ch. 101, L. 1967; Sec. 4, Ch. 237, L. 1967; Sec. 19, Ch. 249, L. 1967), relating to the creation, powers and duties of the state board of public welfare, were repealed by Sec. 52, Ch. 121, Laws of 1974.

71-207. Legal services.**Compiler's Notes**

Section 49, Ch. 121, Laws 1974, sub-

stituted "state department" in this section for "state department of public welfare."

71-208, 71-209. Repealed.**Repeal**

Sections 71-208 and 71-209 (Secs. 5, 6, Part 1, Ch. 82, L. 1937; Sec. 2, Ch. 129, L. 1939; Sec. 2, Ch. 117, L. 1941; Sec. 1, Ch. 255, L. 1965; Sec. 30, Ch. 93, L. 1969),

relating to divisions within the state department of public welfare and powers and duties of the administrator were repealed by Sec. 52, Ch. 121, Laws of 1974.

71-210. Authority and activities of the state department. (1) The state department has authority over and administration or supervision of all the purposes and operations as set forth under Title 71. The state department shall:

(a) to (d) * * * [Same as parent volume.]

(e) Provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administration of public welfare functions, and for efficiency and economy;

(f) Assist and co-operate with other state and federal departments, bureaus, agencies and institutions, when so requested, by performing services in conformity with the purposes of this act.

(g) Administer and supervise all federal funds allocated to this state and all state funds appropriated to this state department for the activities set forth in Title 71. The state department shall do all things necessary, in conformity with federal and state law, for the proper fulfillment of the purposes set forth in Title 71.

(2) The state department may:

(a) Purchase, exchange, condemn, or receive by gift, either real or personal property which is necessary to carry out its functions under Title 71. Title to property obtained under this subsection shall be taken in the name of the state of Montana, for the use and benefit of the state department.

(b) Contract with the federal government to carry out its functions under Title 71. The state department may do all things necessary in order to avail itself of federal aid and assistance.

History: En. Subd. (a) to (g), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 2, Ch. 199, L. 1951; amd. Sec. 1, Ch. 72, L. 1957; amd. Sec. 20, Ch. 121, L. 1974.

Amendments

The 1974 amendment substituted "Title 71" for "this act" in the first sentence of subsection (1); substituted subdivision (1)(e) for "Provide services to county governments in respect to organization

and supervision of county welfare departments for efficiency and economy in the administration of public welfare functions"; deleted former subdivision (1)(f) relating to salaries, appointments, educational leaves and staff development needs (see parent volume); added subdivision (1)(g) and subsection (2); and made minor changes in phraseology, punctuation and style.

71-210.1. Public assistance personnel. The state department shall (1) maintain a merit system pertaining to qualifications for appointment, terms of office, annual merit rating, releases, promotions, and salary schedules for all public assistance personnel. The state department shall have examina-

tions held from time to time throughout the state to establish and furnish to county departments lists, in order of merit, of persons eligible for appointment. Personnel standards shall conform as far as possible with general standards established or required by the federal government.

(2) Develop policies relating to educational leave of employees, and to staff development needs.

(3) Supervise the appointment, dismissal, and entire status of the public assistance personnel attached to county boards in accordance with the merit system. All public assistance personnel shall be residents of this state, unless it is impossible to find residents of this state possessing qualifications required by the merit system. If possible, county assistance personnel shall be residents of the county in which they work.

History: En. 71-210.1 by Sec. 21, Ch. 121, L. 1974.

71-210.2. Authority to provide supplementary payments from state funds. The department of social and rehabilitation services shall have the authority to provide supplementary payments from state funds to recipients of supplemental security income for the aged, blind or disabled under Title XVI of the social security act of the United States, or any future amendments thereto.

History: En. 71-210.1 by Sec. 1, Ch. 358, L. 1974.

Title of Act

An act to authorize the department of social and rehabilitation services to pro-

vide supplementary assistance to recipients of supplemental security income under Title XVI of the Social Security Act of the United States; and providing an effective date.

71-210.3. Rules and regulations concerning supplementary payments. The department shall have the authority to establish standards of assistance and apply them uniformly throughout the state and to determine individuals eligible for and the amount of such supplementary payments under federal and state guidelines.

History: En. 71-210.2 by Sec. 2, Ch. 358, L. 1974.

Effective Date

Section 3 of Ch. 358, Laws 1974 pro-

vided the act should be in effect from and after its passage and approval. Approved March 28, 1974.

71-216, 71-217.

Compiler's Notes

Section 50, Ch. 121, Laws 1974, substituted "state department" in these sec-

tions for "state board" and "state department of public welfare."

71-218. Department—functions. County departments are under the supervision of the state department and subject to audit by the state department.

History: En. Subd. (c), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 6, Ch. 129, L. 1939; amd. Sec. 22, Ch. 121, L. 1974.

Amendments

The 1974 amendment substituted "the state department" for "such field supervisors" after "supervision of"; substituted

"audit by the state department" for "audit by such field auditors as may be appointed for this purpose by the state department"; deleted a second sentence relating to the positions of field supervisor and field auditor; and made minor changes in phraseology.

71-220. Repealed.**Repeal**

Section 71-220 (Subd. (e), Sec. 10, Part 1, Ch. 82, L. 1937), relating to reports by

the county boards to the state department of public welfare, was repealed by Sec. 52, Ch. 121, Laws of 1974.

71-222. Millage taxes to be levied—expenditures—budgets. (1) The board of county commissioners in each county shall levy seventeen (17) mills for the county poor fund as provided by law, or so much thereof as may be necessary. The board shall budget and expend so much of the funds in the county poor fund for all purposes of this act as will enable the county welfare department to pay the general relief activities of the county and to reimburse the state department for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share of any other welfare activity that may be carried on jointly by the state and the county.

(2) The amounts set up in the budget for the reimbursements to the state department shall be sufficient to make all of these reimbursements in full. The budget shall make separate provision for each one of these public assistance activities, and proper accounts shall be established for the funds for all such activities.

(3) As soon as the preliminary budget provided for in section 16-1903 has been agreed upon, a copy thereof shall without delay be mailed to the state department, and at any time before the final adoption of the budget, the department shall make such recommendations with regard to changes in any part of the budget relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the Public Welfare Act.

(4) The state department shall promptly examine the preliminary budget in order to ascertain if the amounts provided for reimbursements to the state department are likely to be sufficient, and shall notify the county clerk of his findings. The board shall make such changes in the amounts provided for reimbursements, if any are required, that the county will be able to make the reimbursements in full.

(5) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the state department without having first obtained a statement in writing from the state department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(6) No part of the county poor fund, irrespective of the source of any part thereof, may be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance, or its proportionate share of any other welfare activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor may be made out of any moneys in the county poor fund, whether such moneys are produced by seventeen (17) mill levy provided for in paragraph one (1) of this section or from any additional

levy authorized or to be authorized by law. Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the department of health and environmental sciences, and, when such expenditure has been approved by the state department.

History: En. Subd. (b), Sec. 11, Part 1, Ch. 82, L. 1937; amd. Sec. 8, Ch. 129, L. 1939; amd. Sec. 3, Ch. 117, L. 1941; amd. Sec. 6, Ch. 199, L. 1951; amd. Sec. 1, Ch. 239, L. 1963; amd. Sec. 2, Ch. 69, L. 1967; amd. Sec. 23, Ch. 121, L. 1974.

Amendments

The 1974 amendment substituted "state

department" for "state department of public welfare" in subsections (1) and (6); substituted "state department" for "state administrator of public welfare" in subsections (3), (4) and (5); substituted "department of health and environmental sciences" for "state board of health" in subsection (6); and made minor changes in phraseology, punctuation and style.

71-223. Right of appeal. (1) If an application for assistance under Title 71, except for benefits under chapter 19 pertaining to veterans' welfare, is not acted upon promptly or if a decision is made with which the applicant or recipient is not satisfied, he may appeal to the board of social and rehabilitation appeals for a fair hearing by addressing a request for a hearing to the state department. The board of social and rehabilitation appeals shall, upon receipt of a request for a hearing, give the applicant or recipient prompt notice and opportunity for a fair hearing. A county welfare board which is involved in a grievance shall be represented at such a hearing.

(2) The state department may, upon its own motion, review any decision of a county welfare board, and may consider any application upon which a decision has not been made by the county board within a reasonable time from the filing thereof. The state department may have an additional investigation made, and shall make a decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this act.

(3) If the state department reviews a county decision on its own motion, applicants or recipients affected by the decisions of the state department shall, upon request, be given reasonable notice and an opportunity for a fair hearing by the board of social and rehabilitation appeals.

(4) All decisions of the state department or the board of social and rehabilitation appeals are final and are binding and shall be complied with by the county department.

History: En. Sec. 12, Part 1, Ch. 82, L. 1937; amd. Sec. 7, Ch. 199, L. 1951; amd. Sec. 1, Ch. 24, L. 1953; amd. Sec. 24, Ch. 121, L. 1974.

Amendments

The 1974 amendment substituted "Title 71, except for benefits under chapter 19 pertaining to veterans' welfare" for "this act" in the first sentence of subsection (1); deleted "by the county welfare board" after "acted upon" in the first sentence of subsection (1); substituted "board of social and rehabilitation appeals" for "state board of public welfare" in three places in subsection (1); deleted

"public welfare" after "state department" in the first sentence of subsection (1); substituted "a request of a hearing" for "such an appeal" in the second sentence of subsection (1); deleted "and the county welfare board" before "prompt notice" in the second sentence of subsection (1); deleted a former third sentence in subsection (1) relating to the state board prescribing the manner and form for appeals; inserted "which is involved in a grievance" after "county welfare board" in the final sentence of subsection (1); substituted "state department" for "state board" throughout subsections (2) and (3); substituted "board of social and re-

habilitation appeals" for "state board" in subsection (3); substituted "state department or the board of social and rehabilita-

tion appeals" for "state board" in subsection (4); and made minor changes in phraseology, punctuation and style.

71-224, 71-225. Repealed.

Repeal

Sections 71-224 and 71-225 (Secs. 13, 14, Part 1, Ch. 82, L. 1937; Sec. 9, Ch. 129, L. 1939), relating to the power of the

state board of public welfare to hold property and make contracts, were repealed by Sec. 52, Ch. 121, Laws of 1974.

71-227. Approval or denial of applications.

Compiler's Notes

Section 50, Ch. 121, Laws 1974, sub-

stituted "state department" throughout this section for "state board."

71-228. Revocation of assistance. If the county or state departments have reason to believe, by reason of a complaint or otherwise, that public assistance under Title 71 has been improperly granted, it shall have an investigation made. If it appears as a result of an investigation that the assistance was improperly granted, the state department shall notify the county department that no further payments shall be authorized for such recipient. The right of appeal is granted recipients whose assistance has been revoked.

History: En. Sec. 17, Part 1, Ch. 82, L. 1937; amd. Sec. 25, Ch. 121, L. 1974.

Amendments

The 1974 amendment substituted "Title 71" for "this act" and made minor changes in phraseology.

71-229. Assistance not assignable nor subject to legal process. Except as otherwise provided in Title 71, assistance granted under Title 71 is not transferable or assignable, at law or in equity, and none of the money paid or payable under Title 71 is subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

History: En. Sec. 18, Part 1, Ch. 82, L. 1937; amd. Sec. 26, Ch. 121, L. 1974.

as otherwise provided in Title 71"; substituted "Title 71" twice for "this act"; and made minor changes in phraseology.

Amendments

The 1974 amendment inserted "Except

71-230. Method of issuing assistance grants—reimbursement.

Compiler's Notes

Section 49, Ch. 121, Laws 1974, substituted "state department" throughout

this section for "state department of public welfare."

71-232. Repealed.

Repeal

Section 71-232 (Sec. 21, Part 1, Ch. 82, L. 1937), relating to the limitations of

public welfare act, was repealed by Sec. 52, Ch. 121, Laws of 1974.

71-233. Prerequisite to eligibility of applicant, etc.

Compiler's Notes

Section 50, Ch. 121, Laws 1974, sub-

stituted "state department" in this section for "state department of public welfare."

71-233.1. Investigations by department of revenue—enforcement actions. When requested by the department of social and rehabilitation services, the department of revenue shall have the power and duty to:

(a) investigate matters relating to public welfare assistance and vendor payments including but not limited to the claim for an acceptance of welfare benefits by welfare recipients, and the receipt and disbursal of welfare funds by state, county or other governmental agencies;

(b) institute civil or criminal actions in the appropriate courts to enforce the welfare laws and violations thereof.

History: En. Sec. 1, Ch. 295, L. 1973.

Title of Act

An act authorizing the department of revenue to investigate matters relating to

public welfare payments; to institute civil and criminal actions for enforcement of the welfare laws and to require the co-operation of other agencies to effectuate the purposes of this act.

71-233.2. Co-operation of governmental agencies with department of revenue. All state departments and agencies and county or other governmental agencies shall co-operate with the department of revenue and its employees to effectuate the purpose of this act.

History: En. Sec. 2, Ch. 295, L. 1973.

71-233.3. Information made available to department of revenue. (1) The department of social and rehabilitation services and its local units shall make available to the department of revenue information contained in the welfare files pertinent to the investigations and judicial actions described in section 1 [71-233.1].

(2) Every other state, county, or other governmental agency shall make available to the agents or attorneys of the department of revenue, all records, files, memoranda, forms or other papers relating to public welfare matters including income tax returns filed with the department of revenue.

History: En. Sec. 3, Ch. 295, L. 1973.

71-233.4. Nondisclosure of information resulting from investigation—violation of disclosure provisions by employees. (1) No information obtained by the department of revenue or its agents and attorneys as a result of an investigation shall be disclosed except in accordance with the laws applicable to the source of information; provided, however, such information may be used or disclosed as necessary in any court action.

(2) Each employee violating the disclosure provisions shall be subject to the criminal charge and penalties applicable to the source of information.

History: En. Sec. 4, Ch. 295, L. 1973.

71-233.5. Definitions. As used in this act, “public welfare” and “welfare” mean any kind of financial or social assistance administered by or under the supervision of the department of social and rehabilitation services.

History: En. Sec. 5, Ch. 295, L. 1973.

71-234. Determination of liability for contribution, etc.**Compiler's Notes**

Section 49, Ch. 121, Laws 1974, substituted "state department" throughout

this section for "state department of public welfare."

71-235. Living relatives—jointly and severally liable—scale of contribution. The living relatives of each needy person, named in this act, shall be and they hereby are made jointly and severally liable in the order named in section 71-233 to such needy person for the monthly amounts of money determined in accordance with the following scale, to wit:

RELATIVES CONTRIBUTION SCALE

A. Net monthly income of responsible relatives in one family in dollars	B. Number of persons dependent upon income exclusive of applicant									
	1	2	3	4	5	6	7	8	9	10 and over
	C. Maximum required monthly contribution									
Under 304.....	0	0	0	0	0	0	0	0	0	0
305 to 399.....	22	0	0	0	0	0	0	0	0	0
400 to 489.....	43	14	0	0	0	0	0	0	0	0
490 to 619.....	72	43	29	22	7	0	0	0	0	0
620 to 739.....	101	72	58	50	36	29	14	0	0	0
740 to 869.....	130	101	86	79	65	58	43	29	14	0
870 to 1024.....	144	130	115	108	94	86	72	58	43	29
1025 to 1179.....	144	144	144	144	130	123	108	94	79	65
1180 to 1339.....	144	144	144	144	144	144	144	130	115	101
1340 and up.....	144	144	144	144	144	144	144	144	144	130

For the purposes of this act: (1) A needy person is one who is eligible for public assistance under the laws of this state; (2) "Net monthly income" shall be deemed to mean one-twelfth (1/12) of the difference between the net income for the taxable year as the term net income is defined in section 84-4901, subsection ten (10), and the state income tax paid as determined by the state income tax return filed during the current year.

In those cases where both spouses classify as responsible relatives of needy persons during the same period of time, the liability for contribution of each of said spouses during that time shall be considered to be one-half (1/2) of the amount shown in the scale established by this act.

History: En. Sec. 3, Ch. 180, L. 1953; amd. Sec. 1, Ch. 98, L. 1973.

contributions table, generally reducing the contributions required from low-income and large families and increasing the contributions required from high-income and small families.

Amendments

The 1973 amendment rewrote the contri-

71-236. Investigation of relatives' state income tax returns—return prima facie evidence of income—penalty for disclosing contents of return. The state department shall be required and it shall be its duty, when necessary to determine the financial circumstances of those relatives herein named, to secure from the state department of revenue a report of the amount of income set forth on the return required by section 84-4914. The

state department of revenue is authorized and it shall be its duty to divulge or make known to the state department the amount of income or any particulars set forth or disclosed in any report or return required under the State Income Tax Act, and submitted by the relatives herein named.

It shall be unlawful for the state department or any deputy, assistant, agent, clerk or other officer or other employee to divulge or make known in any manner any information secured from the state department of revenue in the administration of this act, except for purposes directly connected with the administration of this act. Violation of the provisions of this section shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding one (1) year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of one (1) year, thereafter.

History: En. Sec. 4, Ch. 180, L. 1953; amd. Sec. 49, Ch. 391, L. 1973; amd. Sec. 49, Ch. 121, L. 1974.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equali-

zation" and "department" for "board" throughout the section.

The 1974 amendment substituted "state department" for "state department of public welfare" twice in the first paragraph and for "department" in the third paragraph.

71-237. Effect of liability of relative on granting, etc.

Compiler's Notes

Section 49, Ch. 121, Laws 1974, sub-

stituted "state department" in this section for "state public welfare department."

71-239, 71-240.

Compiler's Notes

Section 49, Ch. 121, Laws 1974, substituted "state department" in these sec-

tions for "state department of public welfare."

71-241. Repealed.

Repeal

Section 71-241 (Sec. 1, Ch. 228, L. 1953; Sec. 15, Ch. 212, L. 1965; Sec. 1, Ch. 60,

L. 1967), relating to liens on real property of recipients of public assistance, was repealed by Sec. 3, Ch. 299, Laws 1973.

71-242. Award of public assistance, etc.

Compiler's Notes

Section 50, Ch. 121, Laws 1974, sub-

stituted "state department" in this section for "state department of public welfare."

71-243 to 71-246. Repealed.

Repeal

Sections 71-243 to 71-246 (Secs. 3 to 6, Ch. 228, L. 1953), relating to liens on real

property of recipients of public assistance, were repealed by Sec. 3, Ch. 299, Laws 1973.

71-246.1. Liens released. All liens held by the department of social and rehabilitation services under authority granted by sections 71-241 through 71-250, R.C.M. 1947, are unenforceable and shall be released.

History: En. Sec. 1, Ch. 299, L. 1973.

Title of Act

An act to render unenforceable all liens held by the state department of social and

rehabilitation services permitted under sections 71-241 through 71-250, R. C. M. 1947; and to repeal sections 71-241, 71-243, 71-244, 71-245, 71-246, 71-248 and 71-249, R. C. M. 1947, relating to the lien of the

state department of social and rehabilitation services upon all real property of an applicant for public assistance and the enforcement of the lien and amending section 71-247, R. C. M. 1947.

Constitutionality

This section is a legitimate and constitutional exercise of legislative power; it does not violate article II, section 31 of the 1972 constitution. *Carkulis v. Doe*, — M —, 521 P 2d 1305.

71-247. Recovery from the estate of a decedent—claim for assistance paid. Upon the death of any recipient of public assistance other than aid to dependent children, or general relief, the state department shall execute and present a claim against the estate of such person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid under this act, separately stating therein the amount of all assistance paid from and after the 1st day of July, 1953.

The state department shall not assert its claim during the lifetime and continued occupancy of any real estate of a deceased recipient's estate by the surviving spouse or dependent as a home or residence unless other claimants or persons shall have instituted proceedings for the probate of the estate of the deceased recipient, in which case the state department shall file its claim hereunder.

History: En. Sec. 7, Ch. 228, L. 1953; amd. Sec. 2, Ch. 299, L. 1973; amd. Sec. 49, Ch. 121, L. 1974.

Amendments

The 1973 amendment deleted from the end of the first paragraph the words "which is secured by the lien herein provided for" and a second sentence making the state's claim a preferred claim; deleted a second paragraph prohibiting enforcement of a claim against real estate occupied by a surviving spouse or dependent but continuing a lien on the real estate; deleted "lien or" before "claim" near the beginning of the present second paragraph;

substituted "any real estate of a deceased recipient's estate" in the present second paragraph for "said real estate"; and inserted "as a home or residence" in the present second paragraph.

The 1974 amendment substituted "state department" for "state department of public welfare" in the first paragraph, and for "state board of public welfare" and "board" in the second paragraph.

Repealing Clause

Section 3 of Ch. 299, Laws 1973 read "Sections 71-241, 71-243, 71-244, 71-245, 71-246, 71-248, 71-249, R. C. M. 1947, are repealed."

71-248, 71-249. Repealed.

Repeal

Sections 71-248, 71-249 (Secs. 8, 9, Ch. 228, L. 1953), relating to property of re-

cipients of public assistance, were repealed by Sec. 3, Ch. 299, Laws 1973.

71-250. Disposition of sums recovered.

Compiler's Notes

Section 49, Ch. 121, Laws 1974, sub-

stituted "state department" in this section for "state board."

CHAPTER 3—GENERAL RELIEF

Section

- 71-302.2. Residency requirements.
- 71-306. Right of hearing.
- 71-307. Relief by check or disbursing orders.
- 71-308. Medical aid and hospitalization.

71-301. Administration.

Cross-References

State department of public welfare abol-

ished and functions transferred, sec. 82A-1902 (1).

71-302. Repealed.**Repeal**

Section 71-302 (Subd. (a), Sec. 2, Part 2, Ch. 82, L. 1937; Sec. 11, Ch. 129, L. 1939; Sec. 4, Ch. 117, L. 1941; Sec. 1, Ch.

156, L. 1951; Sec. 1, Ch. 99, L. 1963), relating to eligibility requirements for general relief, was repealed by Sec. 2, Ch. 152, Laws 1973.

71-302.1. Repealed.**Repeal**

Section 71-302.1 (Sec. 1, Ch. 152, L. 1973), relating to eligibility requirements

for general relief, was repealed by Sec. 3, Ch. 225, Laws of 1974.

71-302.2. Residency requirements. Any person otherwise qualified who makes his home in the state of Montana with the intent to become a resident shall be eligible for general relief. Upon the filing of his application in the county of residence, his assistance shall be paid entirely from state funds until he has resided for one (1) continuous year in the state of Montana, at which time he shall become a financial responsibility of the county in which he resides at the expiration of the one (1) year period. A person who leaves the state of Montana with the intent to reside in another state, and later returns to reside in the state of Montana, shall be deemed a new resident for the purposes of this act. If a recipient moves from his original county of residence to reside in another county, he shall continue to be a financial responsibility of the original county of residence for one (1) year from the date of his change of residence. If during this one (1) year period, the individual resides in several counties, he shall become a financial responsibility of the county in which he resides at the expiration of the one (1) year period. County medical assistance under section 71-308 shall not be entitled to be paid from state funds.

If a person is absent from the state voluntarily, he shall be ineligible for general relief in the state of Montana. Aliens found to be illegally within the United States shall not be eligible for relief from state funds.

Recipients of public assistance who become wards or patients in a licensed nursing home or hospital, foster home or a private charitable institution shall have the county share of financial participation paid entirely from state funds for one (1) year from the original date of entrustment or the original date of state residency, whichever is earlier. At the expiration of such period, the appropriate county as defined by the following guidelines, shall become financially responsible to the extent of its legally required share of participation. The county in which commitment of an adult is initiated shall be deemed the county of financial responsibility except where court decree declares the residency to be otherwise. Where an adult is transferred from a facility or institution to one of the above-enumerated facilities, the county which initiated the original commitment shall be deemed the county of financial responsibility except in the case of an adult transfer from an out-of-state institution, in which case the county in which the facility is located shall be deemed the county of financial responsibility. In all cases where a minor patient or ward is involved, the county of financial responsibility shall be the county in which the parent or guardian resides. Where the custody of a minor is en-

trusted to a state agency, the agency shall have the power to make a reasonable declaration of the county residency of its ward using applicable guidelines enumerated in this section. A person who reaches majority in an institution shall upon release and restoration to competency, have the power to determine his own county residency. Such person shall continue to be a financial responsibility of the county which initiated the original commitment for one (1) year from the date of release, at which time he shall become a financial responsibility of his new county of residence.

Nonresidents or interstate transients may receive temporary relief from county funds in cases of extreme necessity and destitution until they may be returned at state expense to their state of residence or origin. Medical expenses arising from accidental injury to interstate transients shall be paid from county funds and reimbursed by the state upon submission of a proper claim.

Interstate transient, as the term is used in this act, is defined as an individual who has signed a declaration that he is unable to pay for his own necessities or transportation to return to his state of residence or origin and is en route to a point outside of this state, being unable, due to unexpected distress, to reach his destination.

History: En. 71-302.2 by Sec. 1, Ch. 225, L. 1974.

Title of Act

An act amending Section 71-308, R. C. M. 1947, to clarify residency requirements for county financial participation in assistance to residents, nonresidents, trans-

ients, incompetents, and aliens, to recodify county medical responsibilities, and to pay medical expenses for accidental injury to interstate transients from state funds; and repealing sections 71-114, 71-116, 71-117, 71-302.1, and 71-304, R. C. M. 1947.

DECISIONS UNDER FORMER LAW

Constitutionality

Durational residency requirement in state welfare program imposed unconstitutional restraint on right to travel. *Pease v. Hansen*, 404 U S 70, 30 L Ed 2d 224, 92 S Ct 318, following *Shapiro v. Thompson*, 394 U S 618, 22 L Ed 2d 600, 89 S Ct 1322, and reversing 157 M 99, 483 P 2d 720.

Despite the invalidity of the require-

ment of one year's residency in the state in order to qualify for relief, county's obligation to pay general relief assistance may be limited by legislature's residency requirements as it did in section 71-302; where no provision has been made to care for transients, state must provide relief until such time as indigent has established county residency. *Pease v. Hansen*, 159 M 43, 494 P 2d 925.

71-304. Repealed.

Repeal

Section 71-304 (Subd. (c) to (f), Sec. 2, Part 2, Ch. 82, L. 1937), relating to the

status of aliens and interstate transients, was repealed by Sec. 3, Ch. 225, Laws of 1974.

71-306. Right of hearing. Individuals or committees with complaints or grievances concerning assistance may present their complaints or grievances to either the county board or the state department and due consideration shall be given all proven facts presented by the individuals or committees. The county board or the state department shall take action to relieve situations brought to their attention under this section to the extent of funds available.

History: En. Sec. 4, Part 2, Ch. 82, L. 1937; amd. Sec. 8, Ch. 199, L. 1951; amd. Sec. 27, Ch. 121, L. 1974.

Amendments

The 1974 amendment deleted two sentences at the beginning of the section

which read: "If an application for assistance under this chapter is not acted upon by the county welfare board promptly or if a decision is made with which the applicant or recipient is not satisfied, he may appeal to the state department for

a fair hearing. The state department shall, upon receipt of such an appeal, give the applicant or recipient prompt notice and opportunity for a fair hearing"; and made minor changes in phraseology and punctuation.

71-307. Relief by check or disbursing orders. (1) All relief disbursements by county departments of public welfare shall be by warrant or check. However, if the county welfare department finds that a recipient is in the habit of dissipating relief allowances instead of using them for the purposes intended, or that for any other reason it is better for the recipient and his family to receive the allowance through disbursing orders, then disbursing orders shall be used instead of cash payments; but all such disbursing orders must be written in such form that the goods and merchandise to be provided may be furnished by any regular dealer in such goods and merchandise within the county. A recipient of general relief must register for employment with the State Employment Service and must accept available employment within his or her capability. Refusal to accept such employment will render the recipient ineligible for further general relief assistance. If the county has work available which a recipient of general relief is capable of performing, then the county department of public welfare may require the recipient to perform the work at the prevailing rate of wages paid by that county for similar work to be paid from the county poor fund in place of granting him general relief.

(2) The county department of public welfare shall provide coverage under the Workmen's Compensation Act for those recipients of general relief working under the provisions hereof, and may enter into such agreements with the division of workmen's compensation of the department of labor and industry as may be necessary to carry out the provisions of this section.

(3) Any recipient of general relief who is subject to the provisions of this section and who without cause refuses to perform work assigned to him as herein provided, shall lose his eligibility for general relief for one (1) week for each refusal.

History: En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939; amd. Sec. 1, Ch. 180, L. 1963; amd. Sec. 28, Ch. 121, L. 1974; amd. Sec. 1, Ch. 208, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 121 and once by Ch. 208. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 121, Laws of 1974, inserted the numerical subsection designations at the beginning of the paragraphs; substituted "division of workmen's compensation of the department of labor and industry" for "industrial accident board" in subsection (2); and made minor changes in phraseology and punctuation.

Chapter 208, Laws of 1974, inserted the provision in subsection (1) making it mandatory for the county department to have a recipient of general relief work if the county has work available.

71-308. Medical aid and hospitalization. (1) Medical aid and hospitalization for nonresidents within the county and county residents unable to provide such necessities for themselves are the legal and financial duty and responsibility of the board of county commissioners, except as

otherwise provided in other parts of this act, payable from the county poor fund. The board of county commissioners shall make provisions for competent and skilled medical or surgical services as approved by the department of health and environmental sciences or the state medical association, or in the case of osteopathic practitioners by the state osteopathic association or chiropractors by the state chiropractic association, or optometrical services as approved by the Montana optometric association, and dental services as approved by the dental association. "Medical" or "medicine" as used in this act refers to the healing art as practiced by licensed practitioners.

(2) The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by the physicians appointed by the board who shall be known as county physicians or deputy county physicians, and may fix a rate of compensation for the furnishing of the medical attendance.

(3) The board of county commissioners shall make suitable arrangements to provide respectable burial for nonresidents within the county and county residents for whom such expenses are not otherwise available.

History: En. Sec. 6, Part 2, Ch. 82, L. 1937; amd. Sec. 15, Ch. 129, L. 1939; amd. Sec. 5, Ch. 117, L. 1941; amd. Sec. 1, Ch. 155, L. 1947; amd. Sec. 9, Ch. 199, L. 1951; amd. Sec. 1, Ch. 57, L. 1955; amd. Sec. 1, Ch. 86, L. 1957; amd. Sec. 16, Ch. 212, L. 1965; amd. Sec. 29, Ch. 121, L. 1974; amd. Sec. 2, Ch. 225, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 121 and once by Ch. 225. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 121, Laws of 1974, inserted the numerical subsection designations at the beginning of the paragraphs; substituted "department of health and environmental sciences" for "state board of health" in subsection (1); substituted references to "state department," in the paragraph deleted by Ch. 225, for references to "department of public welfare"; and made minor changes in phraseology and punctuation.

Chapter 225, Laws of 1974, substituted "nonresidents within the county and county residents" for "persons" in the first sentence of subsection (1) and in subsection (2) and deleted a paragraph which read: "In automobile accident cases wherein transients traveling through the state of Montana are injured, medical aid and hospitalization shall be paid for by the county wherein the accident occurred and the department of public welfare shall reimburse each county in full upon proper claim being made to the department of public welfare; provided, further, in all other accident cases wherein such transients are injured, medical aid and hospitalization shall be paid for by the county wherein the accident occurred and the department of public welfare shall reimburse such county for one-half of such medical aid and hospitalization paid by such county, upon proper claim being made to the department of public welfare."

Repealing Clause

Section 3 of Ch. 225, Laws 1974 read "Sections 71-114, 71-116, 71-117, 71-302.1, and 71-304, R. C. M. 1947, are repealed."

71-310. Repealed.

Repeal

Section 71-310 (Sec. 8, Part 2, Ch. 82, L. 1937), relating to certification for re-

lief employment, was repealed by Sec. 52, Ch. 121, Laws of 1974.

71-311. Grants from state funds to counties.

Compiler's Notes

Section 50, Ch. 121, Laws 1974, substituted "state department" in this sec-

tion for "state board," "state department of public welfare," "state board of public welfare," and "state administrator."

CHAPTER 4—OLD-AGE ASSISTANCE

71-401 to 71-411. Repealed.**Repeal**

Sections 71-401 to 71-411 (Secs. 1 to 10, Part 3, Ch. 82, L. 1937; Secs. 1, 2, 9, Ch. 213, L. 1943; Sec. 1, Ch. 46, L. 1945; Sec. 1, Ch. 69, L. 1947; Sec. 1, Ch. 46, L. 1949; Sec. 2, Ch. 47, L. 1949; Sec. 1, Ch. 155, L. 1949; Secs. 15 to 19, Ch. 199, L. 1951; Secs. 2, 3, Ch. 71, L. 1957; Sec.

1, Ch. 105, L. 1959; Sec. 1, Ch. 5, L. 1961; Secs. 18 to 20, Ch. 212, L. 1965; Sec. 6, Ch. 261, L. 1971; Sec. 1, Ch. 294, L. 1971; Secs. 49, 50, Ch. 121, L. 1974), relating to old-age assistance, were repealed by Sec. 1, Ch. 210, Laws of 1974, effective March 14, 1974.

71-413. Repealed.**Repeal**

Section 71-413 (Sec. 12, Part 3, Ch. 82, L. 1937; Sec. 20, Ch. 199, L. 1951), relating to change of residence of person

receiving old-age assistance, was repealed by Sec. 1, Ch. 210, Laws of 1974, effective March 14, 1974.

CHAPTER 5—AID TO DEPENDENT CHILDREN

Section

71-501. "Dependent child" defined.

71-511. Payment of public assistance money—subrogation of the department of social and rehabilitation services—schedule of payments.

71-501. "Dependent child" defined. (1) The term "dependent child" means a child (a) under the age of eighteen (18), or (b) under the age of twenty-one (21) who is a student under the regulations prescribed by the state department and such children (a and b above) who have been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin, in a place of residence maintained by one or more of such relatives as his or their own home.

(2) Aid to dependent children may not be denied to or for the care of children who would otherwise be entitled to such aid under the laws of this state by the fact that the child is living in the home of his or her father, who is in the opinion of the county board of public welfare of the appropriate county either unemployable or who is honestly and responsibly seeking proper employment and is unable to find such employment nor by the fact that the child is living in the home of a head of a household who is, at the time, receiving job training under the laws of this state; nor shall the benefits which would otherwise accrue to the child for aid to dependent children under the laws of the state be reduced by reason of any such cause.

(3) Primary factors in determining whether a father is honestly and responsibly seeking employment include his willingness to register for employment with the department of labor and industry if that department has a representative in his county of residence, and his willingness to accept employment in which he is able to engage which will increase his ability to maintain himself and his family.

(4) The state department of social and rehabilitation services may establish additional criteria for determining whether a father is honestly and responsibly seeking employment.

History: En. Subd. (a), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965; amd. Sec. 1, Ch. 373, L. 1971; amd. Sec. 30, Ch. 121, L. 1974.

Compiler's Notes

Effective July 1, 1975, this section is amended by Sec. 1, Ch. 309, Laws 1974 to read as follows: "71-501. "Dependent child" defined. The term "dependent child" for welfare purposes means (A) a child under the age of eighteen (18), or (B) a person under the age of twenty-one (21) who is a student under the regulations prescribed by the state department. Such children (A and B above) must be deprived of parental support or care by reason of the death, continued absence from the home, continued unemployment, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin, in a place of residence maintained by one or more of such relatives as his or their own home.

"Aid to dependent children shall not be denied to or for the care of children who would otherwise be entitled to such aid under the laws of the state of Montana by the fact that such child is living in the home of his or her father, who is in the opinion of the county board of public welfare of the appropriate county either unemployable or who is honestly and

responsibly seeking proper employment and is unable to find such employment nor by the fact that such child is living in the home of a head of a household who is, at the time, receiving job training under the laws of the state of Montana; nor shall the benefits which would otherwise accrue to such child for aid to dependent children under the laws of the state of Montana be reduced by reason of any such cause.

"Primary factors in determining whether or not a father is honestly and responsibly seeking employment shall include his willingness to register for employment with the Montana state employment service if the Montana state employment service has a representative in his county of residence and his willingness to accept employment in which he is able to engage which will increase his ability to maintain himself and his family.

"The department of public welfare may establish additional criteria for determining whether or not a father is honestly and responsibly seeking employment."

Amendments

Chapter 121, Laws of 1974, substituted "state department" for "state welfare department" in subsection (1); substituted "department of labor and industry" for "Montana state employment services" in subsection (3); substituted "state department of social and rehabilitation services" for "department of public welfare" in subsection (4); and made minor changes in phraseology, punctuation and style.

71-503. Administration.

Compiler's Notes

Section 50, Ch. 121, Laws 1974, substituted "state department" throughout

this section for "state department of public welfare" and "state board of public welfare."

71-508. County share of participation.

Compiler's Notes

Effective July 1, 1975, this section is amended by Sec. 2, Ch. 309, Laws 1974 to read as follows: "71-508. County share of participation. Each county department

shall reimburse the state department in the amount of one-third (1/3) of the approved aid to dependent children grants exclusive of the federal share."

71-508.1. Federal funding.

Compiler's Notes

Effective July 1, 1975, this section is repealed by Sec. 3, Ch. 309, Laws 1974.

71-509. Periodic reconsideration and changes in amount of assistance, etc.**Compiler's Notes**

Section 49, Ch. 121, Laws 1974, substituted "state department" in this sec-

tion for "state department of public welfare."

71-511. Payment of public assistance money—subrogation of the department of social and rehabilitation services—schedule of payments. Any payment of public assistance money made to or for the benefit of any dependent child or children creates a debt due and owing to the department of social and rehabilitation services by the natural or adoptive parent or parents who are legally responsible for the support of such children by statute or court decree in an amount equal to the amount of public assistance so paid. Provided, that where the support obligation is based upon a court decree, the debt shall be limited to the amount of said court decree.

The department of social and rehabilitation services shall be subrogated to the right of said child or children or person having the care, custody and control of said child or children to prosecute or maintain and recover upon any support action or execute any administrative remedy existing under the laws of the state of Montana to obtain reimbursement of moneys thus expended. If a court decree enters judgment for an amount of support to be paid by an obligor parent, the department shall be subrogated to the debt created by such order and said money judgment shall be deemed to be in favor of the department of social and rehabilitation services.

In no case shall a debt arising under this section be incurred by or collected from a parent or other person who is the recipient of public assistance moneys for the benefit of minor dependent children for the period such person or persons are in such status.

The remedies herein provided are in addition to and not in lieu of existing common law and statutory law.

The department of social and rehabilitation services or its legal representatives may at any time consistent with the income, earning capacity and resources of the debtor, petition the court having jurisdiction over the particular case to set or reset a level and schedule of payments to be paid upon the debt.

History: En. 71-511 by Sec. 1, Ch. 368, L. 1974.

Title of Act

An act subrogating the department of social and rehabilitation services to the right of a child or children or person

having the custody of such child or children to prosecute and recover upon support obligations owed by an obligor parent in the amount of public assistance payments made to such child or children or the amount of court ordered support, whichever is less.

CHAPTER 6—AID TO BLIND

71-601, 71-602. Repealed.**Repeal**

Sections 71-601 and 71-602 (Sees. 1, 2, Part 5, Ch. 82, L. 1937; Sees. 1, 2, Ch. 157, L. 1951; Sec. 7, Ch. 71, L. 1957;

Sec. 50, Ch. 121, L. 1974), relating to aid to the blind, were repealed by Sec. 1, Ch. 210, Laws of 1974, effective March 14, 1974.

71-603. Repealed.**Repeal**

Section 71-603 (Sec. 2, Ch. 55, L. 1943), providing that the powers and duties of the state blind commission devolve upon

the state department of public welfare, was repealed by Sec. 52, Ch. 121, Laws of 1974, effective March 14, 1974, and by Sec. 1, Ch. 210, Laws of 1974.

71-604 to 71-607. Repealed.**Repeal**

Sections 71-604 to 71-607 (Secs. 3 to 6, Part 5, Ch. 82, L. 1937; Sec. 8, Ch. 117, L. 1941; Secs. 4, 5, 8, 9, Ch. 213, L. 1943; Sec. 3, Ch. 47, L. 1949; Sec. 1, Ch. 81, L. 1943; Secs. 3, 4, Ch. 157, L. 1951; Secs. 27 to 30, Ch. 199, L. 1951; Sec. 1, Ch. 153,

L. 1959; Sec. 1, Ch. 4, L. 1961; Sec. 7, Ch. 261, L. 1971; Sec. 1, Ch. 378, L. 1971; Sec. 49, Ch. 121, L. 1974), relating to aid to the blind, were repealed by Sec. 1, Ch. 210, Laws of 1974, effective March 14, 1974.

71-609 to 71-614. Repealed.**Repeal**

Sections 71-609 to 71-614 (Secs. 8 to 13, Part 5, Ch. 82, L. 1937; Sec. 6, Ch. 213, L. 1943; Sec. 2, Ch. 69, L. 1947; Sec. 2, Ch. 155, L. 1949; Secs. 32, 33, Ch. 199,

L. 1951; Sec. 8, Ch. 71, L. 1957; Sec. 1, Ch. 8, L. 1961; Sec. 1, Ch. 155, L. 1971), relating to aid to the blind, were repealed by Sec. 1, Ch. 210, Laws of 1974, effective March 14, 1974.

CHAPTER 7—CHILD WELFARE

Section

71-708. Powers and duties of the state department.

71-709. Duty to strengthen child welfare services.

71-706. Definitions as used in this chapter.**Compiler's Notes**

Section 49, Ch. 121, Laws 1974, substituted "state department" in this sec-

tion for "state department of public welfare."

71-707. Repealed.**Repeal**

Section 71-707 (Sec. 3, Part 6, Ch. 82, L. 1937; Sec. 26, Ch. 264, L. 1955), relating to administration of child welfare

services and child protection functions by the state department of public welfare, was repealed by Sec. 52, Ch. 121, Laws of 1974.

71-708. Powers and duties of the state department. Subject to the authority and regulations of the state department and in co-operation with the federal government, the state department shall:

- (1) Adopt rules necessary to carry out the purposes of this chapter;
- (2) Administer or supervise all child welfare activities of the state except the child welfare activities which are administered by the department of health and environmental sciences.

History: En. Subd. (a), (b), (c), (d), Sec. 4, Part 6, Ch. 82, L. 1937; Subd. (a) rep. Sec. 10, Ch. 117, L. 1941; amd. Sec. 31, Ch. 121, L. 1974.

Amendments

The 1974 amendment substituted "federal government" for "federal children's bureau" in the introductory phrase; de-

leted a subdivision relating to appointment of personnel; deleted "subject to the approval of the state board" from the beginning of subdivision (1); substituted "department of health and environmental sciences" for "state board of health" in subdivision (2); and made minor changes in phraseology, punctuation and style.

71-709. Duty to strengthen child welfare services. The state department shall make provision for establishing and strengthening child welfare services, including protective services and for care of children in family foster homes. When funds are available for that purpose, the state department may make agreements for the payment of compensation for keeping children in family foster homes.

History: En. Subd. (e), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 19, Ch. 129, L. 1939; amd. Sec. 32, Ch. 121, L. 1974.

department" for "child welfare division"; deleted "subject to the approval of the state department" from the last sentence; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "state

CHAPTER 8—PUBLIC WELFARE ACT—PART 7

71-801. Repealed.

Repeal

Section 71-801 (Sec. 1, Part 7, Ch. 82, L. 1937), relating to the title of the public

welfare act, was repealed by Sec. 52, Ch. 121, Laws of 1974.

CHAPTER 9—PUBLIC WELFARE ACT PART 8—APPROPRIATIONS,
DISPOSITION OF FUNDS AND DISBURSEMENTS

71-901. Receipt of funds.

Compiler's Notes

Section 49, Ch. 121, Laws 1974, substituted "state department" in this sec-

tion for "state department of public welfare."

71-902 to 71-904. Repealed.

Repeal

Sections 71-902 to 71-904 (Secs. 2, 3, 4, Part 8, Ch. 82, L. 1937; Secs. 21, 22, Ch. 129, L. 1939), relating to source of state appropriation, method of disbursement

and transfer of funds from specific accounts under the public welfare act, were repealed by Sec. 52, Ch. 121, Laws of 1974.

CHAPTER 10—PUBLIC WELFARE ACT PART 9—TO PROVIDE FOR
PAYMENTS TO PERSONS HAVING SILICOSIS

Section

- 71-1003. Eligibility requirements for aid to persons having silicosis, as herein defined.
- 71-1004. Amounts of payments.
- 71-1008. Conformity with acts of federal government.
- 71-1010. Surviving spouse of person receiving silicosis payments—payments continue.

71-1002. Administration.

Cross-References

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

71-1003. Eligibility requirements for aid to persons having silicosis, as herein defined. Payment shall be made under this act to any person who:

(a) to (c). * * * [Same as parent volume.]

(d) Is not receiving, with respect to any month for which he would receive a payment under this act, compensation under the Workmen's Com-

pensation Act of the state of Montana, as provided by chapter 155, Laws of 1959, which will equal the sum of one hundred seventy-five dollars (\$175) hereunder. If he is receiving payments under the Workmen's Compensation Act, as provided by chapter 155, Laws of 1959, which is less in the aggregate than one hundred seventy-five dollars (\$175), then he is entitled to a payment under this act of the difference between the amount received under the Workmen's Compensation Act, as provided by chapter 155, Laws of 1959, and one hundred seventy-five dollars (\$175) per month.

History: Sec. 3, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L.

1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973.

Amendments

The 1973 amendment increased the monthly amount specified in three places in subdivision (d) from \$158.50 to \$175.00.

71-1004. Amounts of payments. Subject to the provisions of this act and the deductions herein provided, any person who has silicosis, as defined in this chapter, and who has, subject to the regulations and standards of the division of workmen's compensation; been determined by the division of workmen's compensation to be entitled payment under this chapter for silicosis, shall be granted a payment by the division of workmen's compensation of one hundred seventy-five dollars (\$175) per month subject to such appropriations as may from time to time be made. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein.

History: Sec. 4, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 216, L. 1947; amd. Sec. 2, Ch. 192, L. 1949; amd. Sec. 1, Ch. 204, L. 1953; amd. Sec. 2, Ch. 252, L. 1955; amd. Sec. 1, Ch. 248, L. 1959; amd. Sec. 4, Ch. 225, L. 1961; amd. Sec. 2, Ch. 267, L. 1965; amd. Sec. 2, Ch. 125, L. 1967; amd. Sec. 2, Ch. 260, L. 1969; amd. Sec. 2, Ch. 105, L. 1971; amd. Sec. 2, Ch. 504, L. 1973.

Amendments

The 1973 amendment substituted references to the division of workmen's compensation for references to the industrial accident board; and increased the monthly amount specified near the end of the first sentence from \$158.50 to \$175.00.

71-1008. Conformity with acts of federal government. If and when the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, as herein defined, the division of workmen's compensation of the state of Montana is hereby authorized to administer in the state of Montana such grants-in-aid and payments in addition to grants made by this act. The total payments to any individual under this act shall not exceed one hundred seventy-five dollars (\$175) per month exclusive of any grants made by Congress.

History: Sec. 8, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 3, Ch. 216, L. 1947; amd. Sec. 3, Ch. 192, L. 1949; amd. Sec. 2, Ch. 204, L. 1953; amd. Sec. 3, Ch. 252, L. 1955; amd. Sec. 2, Ch. 3, L. 1961; amd. Sec. 8, Ch. 225, L. 1961; amd. Sec. 3, Ch. 267, L. 1965; amd. Sec. 3, Ch. 125, L. 1967; amd. Sec. 3, Ch. 260, L. 1969; amd. Sec. 3, Ch. 105, L. 1971; amd. Sec. 3, Ch. 504, L. 1973.

Amendments

The 1973 amendment substituted "division of workmen's compensation" for "industrial accident board" in the first sentence; and increased the monthly amount specified in the second sentence from \$158.50 to \$175.00.

71-1010. Surviving spouse of person receiving silicosis payments—payments continue. Upon the death of a person receiving payments for silicosis under section 71-1003, R. C. M. 1947, the surviving spouse, as long as such spouse remains unmarried, is entitled to receive the payments granted the deceased spouse.

History: En. 71-1010 by Sec. 1, Ch. 203, L. 1974.

Title of Act

An act continuing payments for silicosis to a surviving spouse and providing an effective date.

Effective Date

Section 2 of Ch. 203, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 14, 1974.

CHAPTER 11—SALE OF REAL PROPERTY HELD BY PUBLIC WELFARE DEPARTMENT

(Repealed—Section 52, Chapter 121, Laws of 1974)

71-1101 to 71-1107. Repealed.

Repeal

Sections 71-1101 to 71-1107 (Secs. 1 to 7, Ch. 23, L. 1947), relating to the sale

of real property held by the public welfare department, were repealed by Sec. 52, Ch. 121, Laws of 1974.

CHAPTER 12—PERMANENTLY AND TOTALLY DISABLED PERSONS IN NEED

(Repealed—Section 1, Chapter 210, Laws of 1974)

71-1201 to 71-1210. Repealed.

Repeal

Sections 71-1201 to 71-1210 (Secs. 1 to 10, Ch. 160, L. 1951; Secs. 9, 10, Ch. 71, L. 1957; Sec. 1, Ch. 104, L. 1959; Sec. 1, Ch. 6, L. 1961; Sec. 8, Ch. 261, L. 1971;

Sec. 1, Ch. 379, L. 1971; Secs. 49, 50, Ch. 121, L. 1974), relating to aid to the permanently and totally disabled, were repealed by Sec. 1, Ch. 210, Laws of 1974, effective March 14, 1974.

CHAPTER 14—SERVICES TO THE BLIND

Section

71-1401. Definitions.

71-1404. Administration.

71-1407. Gifts.

71-1401. Definitions. As used in this act:

(1) "Vocational rehabilitation" and "vocational rehabilitation services" mean any services, provided directly or through public or private instrumentalities, found by the state department of social and rehabilitation services to be necessary to compensate a blind individual for his employment handicap, and to enable him to engage in a remunerative occupation including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational and business licenses, tools, equipment, initial stocks and supplies, including livestock, capital advances, maintenance, and training books and materials.

(2) "Rehabilitation services" means any services, provided directly or through public or private instrumentalities, found by the state department of social and rehabilitation services to be necessary to compensate

a blind individual for his employment handicap or to enable him to achieve the maximum degree of self-care and to engage in productive tasks.

(3) "Rehabilitation training" means all necessary training provided to a blind individual to compensate for his employment handicap including but not limited to, manual, preconditioning prevocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(4) "Physical restoration" means any medical, surgical or therapeutic treatment necessary to correct or substantially reduce a blind individual's employment handicap within a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory conditions.

(5) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(6) "Occupational licenses" means a license, permit, or other written authority required by any governmental unit to be obtained in order to engage in an occupation.

(7) "Business licenses" means any license, permit, or other written authority required by any governmental unit to be obtained in order to engage in a business.

(8) "Maintenance" means money payments not exceeding the estimated cost of subsistence during the provision of vocational rehabilitation and rehabilitation services.

(9) "Blind individual" means an individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees; or who has other eye conditions which render vision equally defective; or who has an eye condition which will cause blindness.

History: En. Sec. 1, Ch. 167, L. 1955; amd. Sec. 33, Ch. 121, L. 1974.

Amendments

The 1974 amendment deleted definitions of "State department," "State board,"

"Administrator," and "Supervisor"; substituted "state department of social and rehabilitation services" for "supervisor" in subdivisions (1) and (2); and made minor changes in phraseology, punctuation and style.

71-1402, 71-1403. Repealed.

Repeal

Sections 71-1402 and 71-1403 (Secs. 2, 3, Ch. 167, L. 1955), relating to the powers

and duties of the supervisor of the program of services for the blind, were repealed by Sec. 52, Ch. 121, Laws of 1974.

71-1404. Administration. The state department shall provide the services authorized by this act to blind individuals determined by it to be eligible therefor and, in carrying out the purposes of this act the department may, among other things:

(1) Co-operate with other departments, agencies, and institutions, both public and private, in providing the services authorized by this act to blind individuals, in studying the problems involved therein, and in establishing, developing, and providing, in conformity with the purposes of this act, such programs, facilities and services as may be necessary or desirable;

(2) Enter into reciprocal agreements with other states to provide the services authorized by this act to residents of the states concerned;

(3) Conduct research and compile statistics relating to the provision of services to or the need of services of blind individuals;

(4) Provide supplementary services to any applicant or recipient who is in need of treatment either to prevent blindness or to restore his eyesight whether or not he is blind, if he is otherwise qualified for services or training under this act, and if the supplementary services are recommended because of the findings of an ophthalmologist or optometric examination. The supplementary services may include necessary traveling and other expenses to receive treatment from a hospital or clinic designated by the department;

(5) Take other action necessary or appropriate to carry out this act.

History: En. Sec. 4, Ch. 167, L. 1955; amd. Sec. 34, Ch. 121, L. 1974; amd. Sec. 1, Ch. 237, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 121 and once by Ch. 237. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 121, Laws of 1974, added the provision designated by the compiler as subdivision (5) and made minor changes in phraseology, punctuation, and style.

Chapter 237, Laws of 1974, added the provision designated by the compiler as subdivision (4).

Effective Date

Section 2 of Ch. 237, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

71-1406. Receipt and disbursement of federal funds.

Compiler's Notes

Section 49, Ch. 121, Laws 1974, sub-

stituted "state department" in this section for "administrator."

71-1407. Gifts. The department shall accept and use gifts made unconditionally by will or otherwise for the purposes of this act. Gifts made under such conditions as in the judgment of the state department are proper and consistent with the provisions of this act may be so accepted and shall be held, invested, reinvested, and used in accordance with the conditions of the gift.

History: En. Sec. 7, Ch. 167, L. 1955; amd. Sec. 35, Ch. 121, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "administrator" in the first sentence and for "board" in the second sentence.

71-1408, 71-1409.

Compiler's Notes

Section 49, Ch. 121, Laws 1974, sub-

stituted "state department" in these sections for "supervisor."

71-1410 to 71-1415. Repealed.

Repeal

Sections 71-1410 to 71-1415 (Secs. 10 to 12, 15 to 17, Ch. 167, L. 1955), relating to eligibility for services, nonassignability of maintenance, hearings, misuse of rec-

ords, saving clause, appropriation, and title of the services of the blind act, were repealed by Sec. 52, Ch. 121, Laws of 1974.

CHAPTER 15—MEDICAL ASSISTANCE

Section

71-1516. Eligibility requirements for medical assistance.

71-1517. Amount, scope and duration of assistance.

71-1520. Investigation and determination of eligibility.

71-1524. Exclusion of lien.

71-1511. Provisions for administration.

Compiler's Notes

Sections 47 and 48, Ch. 121, Laws 1974, substituted "state department of social

and rehabilitation services" throughout this section for "state department of public welfare."

71-1513. Repealed.

Repeal

Section 71-1513 (Sec. 3, Ch. 325, L. 1967), relating to consultation by the de-

partment with council appointed by the governor, was repealed by Sec. 52, Ch. 121, Laws of 1974.

71-1515. Contracting with other agencies to process claims.

Compiler's Notes

Section 49, Ch. 121, Laws 1974, sub-

stituted "state department" in this section for "state welfare board."

71-1516. Eligibility requirements for medical assistance. Medical assistance shall be granted in behalf of all persons who reside in the state of Montana, including residents temporarily absent from the state and who meet any of the following requirements:

(1) to (3). * * * [Same as parent volume.]

(4) Persons in medical institutions who, if they were no longer in such institution, would be eligible for financial assistance under any one of the above programs;

(5). * * * [Same as parent volume.]

(6) All children under twenty-one who are in foster care under the supervision of the state;

(7) All persons whose income is less than one hundred thirty-three and one-third per cent (133 1/3%) of the amounts specified as maximum income levels for federally aided categories of assistance;

(8) All medically needy children under twenty-one (21) years of age as defined by the state department of social and rehabilitation services;

(9) All children under twenty-one (21) who were in foster care under the supervision of the state, and who have been adopted as "hard-to-place" children.

History: En. Sec. 6, Ch. 325, L. 1967; amd. Sec. 2, Ch. 261, L. 1971; amd. Sec. 1, Ch. 20, L. 1973; amd. Sec. 2, Ch. 277, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 20 and once by Ch. 277. Neither amendatory act mentioned or incorpo-

rated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 20, Laws of 1973, added subdivisions (7) and (8); and made a minor change in phraseology.

Chapter 277, Laws of 1973, added as subdivision (7) the language shown as subdivision (9) above.

71-1517. Amount, scope and duration of assistance. The amount, scope, and duration of medical assistance granted eligible persons shall be determined by the state department. Payments on behalf of persons in state operated institutions shall be made only from funds appropriated specifically for this purpose, as such funds are available. However, if available funds are not sufficient to provide an adequate medical care program for all eligible persons, first priority shall be given to those eligible persons enumerated in section 1, subsections (1) through (6) [71-1516 (1) to (6)] of this act and in such event the state department shall by appropriate rules and regulations have the right to limit, reduce, or otherwise curtail the amount, scope, and duration of the medical and remedial care and services made available to those individuals enumerated in section 1, subsections (7) and (8) [71-1516 (7) and (8)] of this act to the extent necessary to assure the implementation of the established priorities. For the purpose of determining eligibility and amount of assistance to be granted to those individuals covered in section 1, subsections (7) and (8) [71-1516 (7) and (8)] of this act, the state department shall establish a maintenance standard.

History: En. Sec. 7, Ch. 325, L. 1967; amd. Sec. 3, Ch. 261, L. 1971; amd. Sec. 2, Ch. 20, L. 1973.

Amendments

The 1973 amendment added the fourth and fifth sentences.

71-1519. Repealed.

Repeal

Section 71-1519 (Sec. 9, Ch. 325, L. 1967; Sec. 5, Ch. 261, L. 1971), relating

to the county share of medical payments paid by the state, was repealed by Sec. 3, Ch. 279, Laws of 1974.

71-1520. Investigation and determination of eligibility. (a) The county department shall promptly investigate and determine the eligibility of each applicant under this act in accordance with the rules and regulations of the state department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of the information given. The county department shall determine whether or not the applicant is eligible for assistance under this act, and aid shall be furnished promptly to eligible persons. The county public welfare board shall review the determination of the eligibility or noneligibility made by the county department. Each applicant shall receive written notice of the decision concerning his application and right of appeal shall be secured to the applicant under the procedures of section 71-223.

(b) Provided, however, the county departments of public welfare and the state department of social and rehabilitation services are hereby authorized to accept the federal social security administration's determination of eligibility for Supplemental Security Income, Title XVI of the Social Security Act, as qualifying such eligible individuals to receive

medical assistance under this act. Where a federal determination has been made, the county will not investigate further, nor review the determination.

History: En. Sec. 10, Ch. 325, L. 1967; amd. Sec. 1, Ch. 181, L. 1974.

Effective Date

Section 2 of Ch. 181, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 12, 1974.

Amendments

The 1974 amendment inserted the subsection designation (a) and added subsection (b).

71-1522. Repealed.

Repeal

Section 71-1522 (Sec. 12, Ch. 325, L. 1967), relating to change of residence of

a person receiving medical assistance, was repealed by Sec. 3, Ch. 279, Laws of 1974.

71-1523. Repealed.

Repeal

Section 71-1523 (Sec. 13, Ch. 325, L. 1967), relating to confidentiality of rec-

ords, was repealed by Sec. 52, Ch. 121, Laws of 1974.

71-1524. Exclusion of lien. No applicant hereunder shall be required to execute an agreement for lien on his real property. No lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual). There shall be no adjustment or recovery (except, in the case of an individual who was sixty-five (65) years of age or older when he received such assistance, from his estate, and then only after the death of his surviving spouse, if any, and only at a time when he has no surviving child who is under age eighteen (18) or is blind or permanently and totally disabled) of any medical assistance correctly paid on behalf of such individual. Recoveries shall be prorated to the federal government and the state in the proportion to which each contributed to the medical assistance. Recovery for medical assistance paid prior to July 1, 1974, shall be prorated to reimburse the county share of participation. The provisions of this act are hereby extended to provide for the recovery of all medical assistance paid under sections 71-1511 through 71-1524 and likewise to all medical aid to the aged assistance paid by the state department during the period of time July 1, 1965, through June 30, 1967.

History: En. Sec. 14, Ch. 325, L. 1967; amd. Sec. 1, Ch. 249, L. 1969; amd. Sec. 1, Ch. 279, L. 1974.

in the third sentence; substituted "and the state" for "and the county involved" in the fourth sentence; and inserted the fifth sentence pertaining to proration of recovery to reimburse the county share of participation.

Amendments

The 1974 amendment substituted "age eighteen (18)" for "age twenty-one (21)"

CHAPTER 16—ECONOMIC OPPORTUNITY AND POVERTY RELIEF

71-1601. Purpose and intent of act.

Compiler's Notes

Executive Reorganization Order 4-71, signed Aug. 30, 1972 and effective Sept. 1, 1972, vested responsibility for adminis-

tration of this program in the economic opportunity division, department of intergovernmental relations.

CHAPTER 18—PROGRAM FOR ADOPTION OF HARD-TO-PLACE CHILDREN

Section

- 71-1801. Purpose.
 71-1802. Definitions.
 71-1803. Administration and regulation.
 71-1804. Adoption of rules—amount of assistance.
 71-1805. County to reimburse state for half of assistance provided.

71-1801. Purpose. It is the purpose of this act to encourage and promote the adoption of children who are difficult to place in adoptive homes. It is the intent of the legislative assembly to offer prospective adoptive parents information concerning relinquished children, information and assistance in completing the adoption process, and financial aid which may be required to enable them to adopt a “hard-to-place” child.

History: En. Sec. 1, Ch. 277, L. 1973.

Title of Act

An act to amend section 71-1516, R. C. M. 1947, to include adopted children who

have been defined as “hard-to-place” with-in eligibility requirements for medical assistance; and to provide financial assistance to the adoptive parents of “hard-to-place” children.

71-1802. Definitions. For the purposes of this act, a “hard-to-place child” is a child who is disadvantaged because of ethnic background, race, color or language; is handicapped because of physical, mental or emotional defects; is three (3) years of age or older; or is a sibling of any of the foregoing. If such “hard-to-place child” is under the permanent custody of any licensed state welfare agency other than the department of social and rehabilitation services, that agency must have exhausted all possible attempts for permanent adoption including reference to the department of social and rehabilitation services.

History: En. Sec. 3, Ch. 277, L. 1973.

71-1803. Administration and regulation. The state department of social and rehabilitation services shall establish, administer and regulate the program of subsidized adoptions established by this act. The department shall keep such records as are necessary to evaluate the program and shall report annually to the governor concerning the number of children adopted under the program, the cost of the program and any other pertinent information.

History: En. Sec. 4, Ch. 277, L. 1973.

71-1804. Adoption of rules—amount of assistance. The department shall establish rules and regulations concerning financial assistance in addition to the medical assistance provided by section 71-1516 to persons who adopt “hard-to-place” children who were, immediately prior to their adoption, legal wards of the department. The amount of the assistance may not exceed the cost of the care of the child in a foster home. Special-purpose assistance may be allowed in the event a child requires a special service, but such assistance may not exceed the cost of similar services provided by the department for children who are legal wards of the department.

History: En. Sec. 5, Ch. 277, L. 1973.

71-1805. County to reimburse state for half of assistance provided. The county in which reside the adoptive parents of a "hard-to-place" child shall reimburse the department for one-half (1/2) of the assistance provided to the adoptive parents exclusive of the federal share of such assistance.

History: En. Sec. 6, Ch. 277, L. 1973.

CHAPTER 19—PROTECTIVE SERVICES FOR DEVELOPMENTALLY DISABLED

- Section**
- 71-1901. Definitions.
 - 71-1902. Legislative findings—rules and regulations—powers in establishment of system.
 - 71-1903. Application for protective services—contents—department as guardian or trustee—decision as to eligibility.
 - 71-1904. Petition in district court to make developmentally disabled person ward of department—contents—hearing—order—disabilities imposed.
 - 71-1905. Protective and supportive services provided.
 - 71-1906. Department as conservator of small estate of person adjudicated developmentally disabled.
 - 71-1907. Manner of providing protective services.
 - 71-1908. Bond not required—exception.
 - 71-1909. Ward to pay for services received if able—accounting by department—claims for state reimbursement.
 - 71-1910. Annual report by field staff to director—report by director to legislature.
 - 71-1911. Hearing to determine whether appointment of department to be continued.
 - 71-1912. Clerk of court to keep records separate—available to public.
 - 71-1913. Acceptance and expenditure of donated funds.

71-1901. Definitions. As used in this act, unless the context otherwise requires:

(1) "Department" means the department of social and rehabilitation services.

(2) "Developmentally disabled person" means a person who by reason of a developmental disability is not able, unassisted, to properly manage or care for his person or his property.

(3) "Ward" means a person for whom protective services are rendered pursuant to the provisions of this act.

(4) "Respondent" means a person in whose interest proceedings are brought under this act.

History: En. Sec. 1, Ch. 508, L. 1973.

Title of Act

An act establishing a program of protective services for the mentally disabled.

71-1902. Legislative findings—rules and regulations—powers in establishment of system. (1) In recognition of the need to provide supervision and protection from exploitation for the developmentally disabled, and in acknowledgment of the desirability of providing such services outside the state institutions, the legislative assembly hereby finds and declares that a program should be established by the department to provide protective services for the developmentally disabled. Such a program should be designed to provide the services set forth in this act for developmentally disabled persons.

(2) The director of the department shall adopt rules and regulations for the administration of this article. The department shall develop a state-wide system of protective service in accordance with regulations and stand-

ards established by the department with respect to this program, the department may:

- (a) provide direct services;
- (b) enter into a contract with any responsible agency, public or private, for provision of protective service by the agency;
- (c) accept appointment by any district court as guardian, trustee, protector, or trustee and protector of a mentally retarded or other developmentally disabled person.

History: En. Sec. 2, Ch. 508, L. 1973.

71-1903. Application for protective services—contents—department as guardian or trustee—decision as to eligibility. (1) Protective services may be provided on a voluntary basis for any developmentally disabled person who requests them for himself or at the request of any interested person, when the department determines that such person is a developmentally disabled person who would benefit from services provided in this act, and that the department is currently able to supply services to such person. A parent may name the department as guardian of the mentally disabled person in his will. A parent may also name the department as guardian or trustee of the mentally disabled person, to assume such duties during the parents lifetime. Voluntary services may be discontinued upon the written request of the ward or any personal representative of the ward.

(2) Application for protective services under this act shall be made to the designated field staff of the department or other designated state agency in the county in which the applicant resides, and the application shall be transmitted promptly to the department. Such application shall be in writing or reduced to writing in the manner and upon the form prescribed by the department and shall contain the name, age, and residence of the applicant and such other information as may be required by the rules and regulations of the department. The rules and regulations of the department shall simplify the application process in order that protective services may be furnished as soon as possible. Adequate safeguards shall be established by the department to ensure that only eligible persons receive protective services under this act. The department shall notify the applicant and the designated field staff of the department or other designated state agency in writing of its decision concerning eligibility for protective services.

History: En. Sec. 3, Ch. 508, L. 1973.

71-1904. Petition in district court to make developmentally disabled person ward of department—contents—hearing—order—disabilities imposed. (1) Any developmentally disabled person may be made a ward of the department by a judicial proceeding which shall be initiated when any reputable person, including the potential ward, or the department, shall file in the district court of the county in which the respondent resides or is physically present, a verified petition alleging that the respondent is a developmentally disabled person, describing the nature and extent of the respondent's disability, and alleging that it will be in the best interests of the respondent that he be made a ward of the department. The petition shall be accompanied by a report of the findings of an evaluation team com-

posed of, but not limited to, a physician, a psychologist, and a social worker, and expressing the belief that the respondent is developmentally disabled to an extent which would cause the respondent to benefit from the protective services provided for in this act.

(2) Upon the filing of such verified petition and team evaluation statement, the court shall issue an order fixing the time and place of a hearing on such petition, which time shall be no earlier than seven (7) days nor later than fourteen (14) days after the filing thereof. Such order shall appoint an attorney for the respondent, whose duty shall be to make such investigation as is necessary to protect the rights of the respondent and to attend all hearings in the matter. Such order also shall advise the respondent of his right to appear at the hearing, and shall give the address and telephone number of the attorney. Personal service shall be made on the respondent, the department, the county attorney, and attorney at least five (5) days prior to the hearing date. The department, the county attorney, and the attorney may waive service.

(3) Upon hearing, the petitioner shall present the evidence to the court. When the court is fully advised, it shall determine whether the respondent is a developmentally disabled person who would benefit from the protective services provided for in this act and whether it is in the best interest of the respondent that he be made a ward of the department and, if it is so found, the court shall enter an order that the respondent is made the ward of the department; otherwise, the petition shall be dismissed.

(4) In any order making the respondent a ward of the department, the court shall specify any legal disabilities to be imposed upon the ward. The order may contain, where appropriate, specific provisions concerning the right to operate a motor vehicle, the right to enter into contracts, or any other civil, political, personal, or property right. No person who becomes a ward of the department shall lose any legal right by reason thereof except as provided in this subsection (4).

(5) Every proceeding under this act shall be civil in nature and shall be entitled "In the interest of _____, respondent," or "In the interest of _____, ward," as the case may be.

History: En. Sec. 4, Ch. 508, L. 1973.

71-1905. Protective and supportive services provided. (1) The department shall provide, in the manner set forth, for each of its wards, those protective and supportive services which the department believes necessary to help the ward function, to the extent of his capabilities, as an independent, self-sufficient member of society. Services under this act may include, but shall not be limited to, assistance in obtaining:

- (a) housing, clothing, and food;
- (b) education and training for living in society and, where possible, for employment;
- (c) employment;
- (d) financial benefits to which the ward may be entitled;
- (e) medical services and supplies;
- (f) necessary legal services;

- (g) marshaling, protection, and insurance of the ward's property;
- (h) financial advice and services;
- (i) participation in cultural and recreational activities.

(2) Services under this act also may include, but shall not be limited to, assistance in preventing exploitation of the ward by others, and in preventing injury to the ward and injury by the ward to others.

History: En. Sec. 5, Ch. 508, L. 1973.

71-1906. Department as conservator of small estate of person adjudicated developmentally disabled. The department may be appointed as conservator of the estate of any person adjudicated developmentally disabled, if the department is providing protective services for such person, and if it shall appear to the court that the value of the assets of such person does not exceed ten thousand dollars (\$10,000), and that there is no other person or institution whose appointment in such capacity would be more appropriate. The department shall report annually to the court which appointed it on the discharge of its duties as conservator of an estate under this section and shall otherwise be subject to the requirements of a general guardian.

History: En. Sec. 6, Ch. 508, L. 1973.

71-1907. Manner of providing protective services. The department shall engage in the direct provision of protective services to wards. If a service comprehended by this act is provided by persons or agencies acting under other state or federal laws, the department shall co-operate with such persons or agencies in obtaining such services for wards of the department. If necessary services cannot be obtained without charge, the department may purchase such services from individuals, voluntary agencies, community centers, or clinics and, to the extent not prohibited by law, from other state agencies.

History: En. Sec. 7, Ch. 508, L. 1973.

71-1908. Bond not required—exception. The department shall not be required to post bond in proceedings under this act unless serving as a court-appointed conservator as provided in section 6 [71-1906] in which case it shall furnish such bond as required by law.

History: En. Sec. 8, Ch. 508, L. 1973.

71-1909. Ward to pay for services received if able—accounting by department—claims for state reimbursement. (1) If the income from the assets available to a ward suffice, the department may require such ward, the custodian, guardian, or conservator of such ward, or, if the governing instrument permits, the trustee of such ward, to pay all reasonable and proper costs of proceedings in the interest of such ward under this act, including, without limitation, court costs, sheriff fees, attorney fees, and costs of diagnostic services, and to pay for protective services rendered to the ward, or to reimburse the department for funds expended for such costs or services.

Upon a written petition filed by the department, the court by which the department was appointed may permit annual expenditure of up to three

per cent (3%) of the principal assets if such expenditure be shown to be of special advantage for the ward. The department shall file an accounting each year and the court by which the department was appointed shall conduct a hearing to determine the propriety of any charge or charges to a ward. All of the provisions of subsections (2) and (3) of section 4 [71-1904 (2) and (3)] concerning notice and hearings shall apply to hearings under this section. Upon such hearing, the court shall enter its order approving, disapproving, or modifying such charge or charges. The order of the court may be prospective as to charges of a recurring nature which reasonably may be anticipated.

(2) Except as provided in subsection (1) of this section, the net cost of proceedings under this act and of services provided by the department shall be paid from moneys appropriated for that purpose by the legislature or from moneys available from any other governmental or private source. Claims for state reimbursements shall be presented to the department at such times and in such manner as the department may prescribe. The department shall certify to the department of administration the amount. The amount so certified shall be paid from the state treasury upon the voucher of the department and the warrant of the department of administration.

History: En. Sec. 9, Ch. 508, L. 1973.

71-1910. Annual report by field staff to director—report by director to legislature. (1) With respect to each ward, designated field staff shall file a written report with the director of the department no later than June 30, 1974, and annually thereafter setting forth the services which have been provided for the ward, including specifically an accounting for any transactions with property of the ward, other than as a court-appointed conservator, the current condition of the ward, and the recommendations of the department as to whether its services should continue or be terminated, and whether other proceedings should be instituted. If the department is serving pursuant to court order under section 4 [71-1904], a copy of such report also shall be filed with such court.

(2) No later than December 31, 1974, the director of the department shall present a complete report to the legislature on the program authorized by this act, with special emphasis on an evaluation of the success of the program, all relevant expenses, and projections of the cost of extending the services provided for in this act to all eligible developmentally disabled persons in this state.

History: En. Sec. 10, Ch. 508, L. 1973.

71-1911. Hearing to determine whether appointment of department to be continued. Upon the written request of the ward, the department, or any other reputable person, or upon its own motion, the appointing court shall hold a hearing to determine whether the appointment of the department should be terminated or continued. All of the provisions of subsections (2) and (3) of section 4 [71-1904 (2) and (3)] concerning notice and hearing shall apply to hearings under this section. No ward may request such hearing more frequently than at six (6) month intervals. Upon such hear-

ing, the court shall enter its order continuing or terminating the appointment of the department.

History: En. Sec. 11, Ch. 508, L. 1973.

71-1912. Clerk of court to keep records separate—available to public. The clerk of the district or probate court shall maintain records and papers in proceedings under this act separately. The information contained in such records shall be available to public officials, attorneys, and persons having bona fide business dealings with the respondents concerned.

History: En. Sec. 12, Ch. 508, L. 1973.

71-1913. Acceptance and expenditure of donated funds. The department may accept and expend grants, gifts, and legacies of money and other property, including federal grants, on behalf of the state of Montana, in furtherance of the purposes of this act, subject to any reasonable and proper conditions any donor may attach which are acceptable to the executive director of the department and which do not violate the constitution, laws or public policy of the state of Montana.

History: En. Sec. 13, Ch. 508, L. 1973.

Emergency Clause

Section 14 of Ch. 508, Laws 1973 read

“The legislature hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.”

CHAPTER 20—COMMUNITY HOMES FOR DEVELOPMENTALLY DISABLED

Section

71-2001. Purposes.

71-2002. Community home for developmentally disabled—definition—limitation on number of residents.

71-2003. Nonprofit corporations and associations authorized—establishment of homes by department.

71-2004. Department contracts with nonprofit corporations—governmental units providing for community homes.

71-2005. Local control of homes subject to departmental rules.

71-2006. Federal aid.

71-2007. Standards, rules and regulations for licensing.

71-2001. Purposes. The legislative assembly, in recognition of the wide and varied needs of developmentally disabled persons and of the desirability of meeting these needs on a community level to the fullest extent possible, and in order to reduce the need for care in existing state institutions, establishes by this act a community developmentally disabled home program to provide facilities and services for the training and treatment of the developmentally disabled in family-oriented residences and establishes a program to provide such homes.

History: En. Sec. 1, Ch. 373, L. 1973; amd. Sec. 1, Ch. 149, L. 1974.

stitutions to make rules and regulations for the operation of the homes.

Title of Act

An act providing for nonprofit organizations to establish community homes for the developmentally disabled, and providing authority to the department of in-

Amendments

The 1974 amendment deleted “through local nonprofit corporations” at the end of the section.

71-2002. Community home for developmentally disabled—definition—limitation on number of residents. A community home for the developmentally disabled is a family-oriented residence or home designed to provide facilities for two (2) to eight (8) developmentally disabled persons established as an alternative to existing state institutions. The number of developmentally disabled persons may not exceed eight (8) in such a community home, except that the department may grant written approval for more than eight (8), but not more than twelve (12) persons.

History: En. Sec. 2, Ch. 373, L. 1973.

71-2003. Nonprofit corporations and associations authorized—establishment of homes by department. (1) Nonprofit corporations or associations in any community may be formed or organized for the purposes of establishing a community home or homes for the developmentally disabled under this act and to receive services, facilities, and funds as the department of social and rehabilitation services and other governmental units may be authorized by law to provide.

(2) The department of social and rehabilitation services may also establish a community home or homes for the developmentally disabled under this act and receive services, facilities, and funds as the department of social and rehabilitation services and other governmental units may be authorized by law to provide.

History: En. Sec. 3, Ch. 373, L. 1973;
amd. Sec. 2, Ch. 149, L. 1974.

partment of social and rehabilitation services" for "department of institutions" throughout the section.

Amendments

The 1974 amendment substituted "de-

71-2004. Department contracts with nonprofit corporations—governmental units providing for community homes. (1) The department of social and rehabilitation services shall be authorized to contract with nonprofit corporations or associations or any other home licensed by the department of social and rehabilitation services to provide facilities and services for the developmentally disabled in community homes for the developmentally disabled and is authorized to expend moneys appropriated or available for that purpose.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning are authorized, at their own expense, to provide funds, materials, facilities, and services for community homes for the developmentally disabled.

History: En. Sec. 4, Ch. 373, L. 1973;
amd. Sec. 3, Ch. 149, L. 1974.

services" for "The department of institutions" at the beginning of subsection (1) and inserted "or any other home licensed by the department of social and rehabilitation services" following "associations" in subsection (1).

Amendments

The 1974 amendment substituted "The department of social and rehabilitation

71-2005. Local control of homes subject to departmental rules. Community homes for the developmentally disabled may be under local control, and the nonprofit corporations or associations operating said community homes are authorized to establish homes and programs they believe in the best interest of their home; provided, however that the director of

the department of social and rehabilitation services shall adopt reasonable rules, regulations, and standards to carry out the administration and purposes of this act.

History: En. Sec. 5, Ch. 373, L. 1973;
amd. Sec. 4, Ch. 149, L. 1974.

Amendments

The 1974 amendment substituted "may be under local control" for "shall be un-

der local control" near the beginning of the section and substituted "department of social and rehabilitation services" for "director of the department of institutions."

71-2006. Federal aid. The department of social and rehabilitation services is authorized to apply for and receive federal aid money or other assistance which may be available for programs in the nature of the program created by this act.

History: En. Sec. 6, Ch. 373, L. 1973;
amd. Sec. 5, Ch. 149, L. 1974.

Amendments

The 1974 amendment substituted "the

department of social and rehabilitation services" for "The department of institutions" at the beginning of the section.

71-2007. Standards, rules and regulations for licensing. The state department of health and environmental sciences shall promulgate and adopt standards, rules and regulations for the licensing of community homes for the developmentally disabled to ensure the health and safety of the residents of such homes.

History: En. Sec. 7, Ch. 373, L. 1973.

Separability Clause

Section 8 of Ch. 373, Laws 1973 read
"It is the intent of the legislative assembly that if a part of this act is invalid, all

valid parts that are severable from the invalid part remain in effect. If part of this act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application."

CHAPTER 21—VOCATIONAL REHABILITATION AND EDUCATION

Section

- 71-2101. Definitions.
- 71-2102. State department duties.
- 71-2103. Co-operation with federal government.
- 71-2104. Receipt and disbursement of rehabilitation funds.
- 71-2105. Eligibility for vocational rehabilitation.
- 71-2106. Hearings.
- 71-2107. Limitation of political activity.
- 71-2108. Separability.

71-2101. Definitions. As used in this chapter:

(1) "Employment handicap" means a physical or mental condition which constitutes, contributes to or if not corrected, will probably result in an obstruction to occupational performance;

(2) "Disabled individual" means a person with an impairment of a physical or mental nature that can be diagnosed by a physician or appropriate specialist;

(3) "Vocational rehabilitation" and "vocational rehabilitation services" mean services provided directly or through public or private instrumentalities, found by the state department of social and rehabilitation services to be necessary to compensate a disabled individual for his employment handicap, and to enable him in so far as possible to engage in a remunera-

tive occupation including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, and training books and materials, facilities for groups of handicapped, service to family members and follow-up service;

(4) "Rehabilitation training" means all necessary training provided to a disabled individual to compensate for his employment handicap including, but not limited to, manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities;

(5) "Physical restoration" means any medical, surgical or therapeutic treatment necessary to correct or substantially reduce a disabled individual's employment handicap within a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory conditions, (except medical care for acute conditions during the course of a rehabilitation plan which, if not corrected, would constitute a hazard to plan completion);

(6) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ;

(7) "Occupational licenses" means a license, permit or other written authority required by any governmental unit to be obtained in order to engage in an occupation;

(8) "Maintenance" means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation;

(9) "Regulations" means regulations made by the state department;

(10) "Rehabilitation plan" means a plan for providing services that will render a disabled individual employable and is jointly developed by the client and the state department.

History: En. Sec. 1, Ch. 74, L. 1947; amd. Sec. 1, Ch. 218, L. 1959; amd. Sec. 1, Ch. 53, L. 1961; amd. Sec. 1, Ch. 192, L. 1971; Sec. 41-801, R. C. M. 1947; amd. and redes. 71-1801 by Sec. 10, Ch. 121, L. 1974.

Amendments

The 1971 amendment substituted "with an impairment of a physical or mental nature that can be diagnosed by a physician or appropriate specialist" for "who has a substantial employment handicap" at the end of the definition "Disabled individual"; added facilities for groups of handicapped, service to family members and follow-up service" at the end of definition of "Vocational rehabilitation"; de-

leted "not to exceed ninety (90) days" following "hospital care" in the definition of "Physical restoration"; added the exception at the end of the definition of "Physical restoration"; and added the definition of "Rehabilitation plan."

The 1974 amendment renumbered this section; substituted "chapter" for "act" in the introductory sentence; deleted definitions of "State board," "Division," and "Director"; substituted "state department of social and rehabilitation services" for "director" in subdivision (3); substituted "the state department" for "this division" in subdivision (10); and made minor changes in phraseology, punctuation and style.

71-2102. State department duties. The state department:

(1) Shall adopt rules governing personnel standards, the protection of records and confidential information, the manner and form of filing

applications, eligibility, and investigation and determination thereof, for vocational rehabilitation services, procedures for fair hearings and any other rules necessary to carry out this act;

(2) Except as otherwise provided by law, shall provide vocational rehabilitation services to eligible disabled individuals;

(3) Shall take any other action it considers necessary or appropriate to carry out the purposes of this act;

(4) May co-operate with other agencies and institutions, both public and private, in providing for vocational rehabilitation of disabled individuals, in studying the problems involved in vocational rehabilitation, and establishing, developing, and providing necessary programs, facilities, and services;

(5) May conduct research and compile statistics relating to the vocational rehabilitation of disabled individuals;

(6) May accept and use gifts to carry out this chapter. Gifts made under conditions which the department considers proper and consistent with this chapter may be accepted, and shall be held, invested, reinvested, and used in accordance with the conditions of the gift.

History: En. Sec. 3, Ch. 74, L. 1947; amd. Sec. 3, Ch. 53, L. 1961; amd. Sec. 12, Ch. 93, L. 1969; Sec. 41-803, R. C. M. 1947; amd. and redes. 71-2102 by Sec. 11, Ch. 121, L. 1974.

Amendments

The 1969 amendment rewrote a provi-

sion pertaining to a duty of the director to prepare and submit reports to the state board and to the governor.

The 1974 amendment renumbered and rewrote this section which listed the duties of the director of the division of vocational rehabilitation.

71-2103. Co-operation with federal government. The state department shall co-operate, pursuant to agreements, with the federal government in carrying out the purposes of any federal statutes, pertaining to rehabilitation and may adopt such methods of administration as are found by the federal government to be necessary for the proper and efficient operation of such agreements or plans for rehabilitation and to comply with such conditions as may be necessary to secure the full benefits of such federal statutes.

History: En. Sec. 5, Ch. 74, L. 1947; amd. Sec. 2, Ch. 218, L. 1959; amd. Sec. 5, Ch. 53, L. 1961; Sec. 41-805, R. C. M. 1947; amd. and redes. 71-1803 by Sec. 12, Ch. 121, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "state department" for "state board, through the division"; and made minor changes in phraseology.

71-2104. Receipt and disbursement of rehabilitation funds. The state treasurer is the custodian of all funds received from the federal government for the purpose of carrying out any federal statutes pertaining to rehabilitation. The state treasurer shall make disbursements from such funds and from all state funds available for rehabilitation purposes upon certification of the state department.

History: En. Sec. 6, Ch. 74, L. 1947; amd. Sec. 3, Ch. 218, L. 1959; Sec. 41-806, R. C. M. 1947; amd. and redes. 71-1804 by Sec. 13, Ch. 121, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "certification of the state department" for "certification in the manner provided in section 41-803 (e)"; and made minor changes in phraseology.

71-2105. Eligibility for vocational rehabilitation. Vocational rehabilitation services shall be provided to any disabled individual (1) who is in the state at the time of filing his application therefor and whose vocational rehabilitation, the state department determines after full investigation, can be satisfactorily achieved, or (2) who is eligible therefor under the terms of an agreement with another state or with the federal government. Except as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified to the state department, the following rehabilitation services shall be provided at public cost only to disabled individuals found to require financial assistance with respect thereto:

- (a) Physical restoration;
- (b) Transportation not provided to determine the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary;
- (c) Occupational licenses;
- (d) Customary occupational tools and equipment;
- (e) Maintenance;
- (f) Training books and materials.

History: En. Sec. 8, Ch. 74, L. 1947; amd. Sec. 3, Ch. 192, L. 1971; Sec. 41-808, R. C. M. 1947; amd. and redes. 71-1805 by Sec. 14, Ch. 121, L. 1974.

the state" for "a resident of the state" in clause (1).

The 1974 amendment renumbered this section; substituted "state department" for "director" in clause (1); substituted "department" for "state board" in clause (2); and made minor changes in phraseology.

Amendments

The 1971 amendment substituted "in

71-2106. Hearings. An individual applying for or receiving vocational rehabilitation who is aggrieved by any action or inaction of the state department is entitled, in accordance with regulations, to a fair hearing by the board of social and rehabilitation appeals.

History: En. Sec. 10, Ch. 74, L. 1947; amd. Sec. 4, Ch. 192, L. 1971; Sec. 41-810, R. C. M. 1947; amd. and redes. 71-1806 by Sec. 15, Ch. 121, L. 1974.

The 1974 amendment renumbered this section; substituted "state department" for "division"; substituted "board of social and rehabilitation appeals" for "state board"; and made minor changes in phraseology.

Amendments

The 1971 amendment substituted "division" for "bureau."

71-2107. Limitation of political activity. An officer or employee engaged in the administration of the vocational rehabilitation program may not use his official authority or influence or permit the use of the vocational rehabilitation program for the purpose of interfering with an election or affecting the result thereof or for any partisan political purpose. Any such officer or employee may not take any active part in the management of political campaigns or participate in any political activity, however he may vote as he pleases and express his opinions as a citizen on all subjects. Any such officer or employee may not solicit or receive, nor may any such officer or employee be obliged to contribute or render, any service, assistance, subscription, assessment, or contribution for any political pur-

pose. An officer or employee violating this provision is subject to discharge or suspension.

History: En. Sec. 12, Ch. 74, L. 1947; Sec. 41-812, R. C. M. 1947; amd. and redes. 71-1807 by Sec. 16, Ch. 121, L. 1974.

Amendments

The 1974 amendment renumbered this section and made minor changes in phraseology.

71-2108. Separability. If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of the provision to other persons or circumstances is not affected thereby.

History: En. Sec. 14, Ch. 74, L. 1947; Sec. 41-813, R. C. M. 1947; amd. and redes. 71-1808 by Sec. 17, Ch. 121, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "chapter" for "act"; and made minor changes in phraseology.

CHAPTER 22—VETERANS' WELFARE

Section

- 71-2201. Definition.
- 71-2202. Duty of board.
- 71-2203. Acknowledgments—officers.
- 71-2204. Aid to be rendered by state, county and municipal officers.
- 71-2205. Acceptance of money for service forbidden.
- 71-2206. Board may accept federal funds.
- 71-2207. Contracts for reimbursing board authorized.

71-2201. Definition. Unless the context requires otherwise, in this chapter, "board" means the board of veterans' affairs provided for in section 82A-1905.

History: En. 71-1901 by Sec. 36, Ch. 121, L. 1974.

71-2202. Duty of board. The board shall establish a state-wide service for discharged veterans and their families; actively co-operate with state and federal agencies having to do with the affairs of veterans and their families; and promote the general welfare of all veterans and their families. Employees of the board must be residents of this state. All male employees of the board shall have served in the military forces of the United States during World War I, World War II, the Korean War, or the Vietnam Conflict, and shall have been honorably discharged therefrom; whenever possible female employees shall also be persons honorably discharged from service during World War I, World War II, the Korean War, or the Vietnam Conflict; preference for employment shall be given to disabled veterans.

History: En. Sec. 2, Ch. 111, L. 1945; amd. Sec. 1, Ch. 92, L. 1971; Sec. 77-1002, R. C. M. 1947; amd. and redes. 71-1902 by Sec. 37, Ch. 121, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "board" for "com-

mission" in two places; deleted part of the second sentence relating to employment of a director, service officers, and other personnel, and to establishing a state headquarters and other offices; substituted "employment" for "all appointments" at the end of the third sentence; and made minor changes in phraseology.

71-2203. Acknowledgments—officers. (1) The board may provide for a seal. The members and employees of the board may take acknowledgments, depositions, and administer oaths and affirmations in any matters connected with the affairs of the board or with the official duties of the members or employees of the board.

(2) The board shall select from its membership, a chairman, a vice-chairman, and a secretary.

History: En. Sec. 5, Ch. 111, L. 1945; Sec. 77-1005, R. C. M. 1947; amd. and redes. 71-1903 by Sec. 30, Ch. 121, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "board" for "commission" throughout subsection (1); added subsection (2); and made minor changes in phraseology and style.

71-2204. Aid to be rendered by state, county and municipal officers. All state, county, and municipal officers shall render such aid to the board as shall be within their power and consistent with the duties of their respective offices.

History: En. Sec. 6, Ch. 111, L. 1945; Sec. 77-1006, R. C. M. 1947; amd. and redes. 71-1904 by Sec. 39, Ch. 121, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "board" for "veterans welfare commission"; and made minor changes in phraseology.

71-2205. Acceptance of money for service forbidden. A member or employee of the board may not accept, receive, or charge any money or thing of value for the performance of any service rendered to any veteran or his or her dependents, at any time or in any manner, other than the compensation allowed by law. A person who violates this section is guilty of a misdemeanor.

History: En. Sec. 7, Ch. 111, L. 1945; Sec. 77-1007, R. C. M. 1947; amd. and redes. 71-1905 by Sec. 40, Ch. 121, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "board" for "commission"; and made minor changes in phraseology.

71-2206. Board may accept federal funds. The board may accept from the federal government, or any agencies thereof, any funds made available to carry out purposes within the scope of the activities and commission purposes of the board and accept such funds as the board directs.

History: En. Sec. 1, Ch. 256, L. 1947; Sec. 77-1009, R. C. M. 1947; amd. and redes. 71-1906 by Sec. 41, Ch. 121, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "board" for "veterans' welfare commission"; and made minor changes in phraseology.

71-2207. Contracts for reimbursing board authorized. The governor of this state and the chairman and secretary of the board may sign contracts with the federal government or any agency thereof for the reimbursement of the veterans' welfare commission for any work which the board may do for which any federal statute provides reimbursement to the states.

History: En. Sec. 2, Ch. 256, L. 1947; Sec. 77-1010, R. C. M. 1947; amd. and redes. 71-1907 by Sec. 42, Ch. 121, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "board" for "veterans' welfare commission"; and made minor changes in phraseology.

CHAPTER 23—PROBLEMS OF AGING

Section

71-2301. Functions of state department.

71-2302. Grants and gifts to state department—deposit and availability.

71-2301. Functions of state department. The state department of social and rehabilitation services shall:

(1) Consult with and advise organized efforts by communities, organizations, associations, and groups that are working toward any forms of assistance to problems of aging.

(2) Study and identify problems of aging.

(3) Review existing programs for the aging and make recommendations to the governor and the legislature for improvements in such programs.

(4) Encourage the sponsorship of community projects which will seek to make optimum use of the time and talents of retired persons.

History: En. Sec. 4, Ch. 73, L. 1965; amd. Sec. 4, Ch. 12, L. 1967; Sec. 82-3504, R. C. M. 1947; amd. and redes. 71-2001 by Sec. 43, Ch. 121, L. 1974.

The 1974 amendment renumbered this section; substituted "state board of social and rehabilitation services" for "commission"; and made minor changes in phraseology, punctuation and style.

Amendments

The 1967 amendment substituted "commission" for "committee."

71-2302. Grants and gifts to state department—deposit and availability. The state department may receive on behalf of the state any grant from the federal government or any grant or gift from any source and accept the grant or gift so that the title shall pass to the state. All grants, grants-in-aid, or gifts shall be deposited with the state treasurer and shall be continuously available to the state department.

History: En. Sec. 5, Ch. 73, L. 1965; amd. Sec. 5, Ch. 12, L. 1967; Sec. 82-3505, R. C. M. 1947; amd. and redes. 71-2002 by Sec. 44, Ch. 121, L. 1974.

Amendments

The 1967 amendment substituted "commission" for "committee."

The 1974 amendment renumbered this section; substituted "state department" for "commission"; and made minor changes in phraseology.

TITLE 72—RAILROADS

Chapter

1. Railroads—regulation by public service commission, 72-101.1, 72-103, 72-107, 72-118, 72-124, 72-136, 72-169 to 72-171.
4. Liability of railroads for killing or injuring livestock, 72-406, 72-407, 72-409.
6. General regulation of business of railroads, 72-620.

CHAPTER 1—RAILROADS—REGULATION BY PUBLIC SERVICE COMMISSION

Section

- 72-101.1. Definitions and terms.
- 72-103. Meetings of commission—quorum—powers.
- 72-107. Expenses of commissioners and employees.
- 72-114. [Transferred.]
- 72-118. Power to alter classification or rate—approval of changes or revisions by the board—hearing complaint.
- 72-124. Attorney general as attorney for commission.
- 72-136. Acceptance of favors and gratuities from railroads prohibited.
- 72-169. Protection of employees affected by closure of station.
- 72-170. Notice to be served on consumer counsel.
- 72-171. Form of notice for public hearing.

72-101. (3779) Repealed.

Repeal

Section 72-101 (Sec. 1, Ch. 37, L. 1907; Sec. 9, Ch. 315, L. 1974), relating to cre-

ation of the railroad commission, was repealed by Sec. 3, Ch. 339, Laws of 1974.

72-101.1. Definitions and terms. (1) This act applies to the transportation of passengers and property between points in this state, and to the receiving, switching, delivering, storing, and handling of property, and to charges connected therewith, and applies to railroad companies, express companies, car companies, sleeping-car companies, freight and freight-line companies, and to any shipments of property made from one point in this state to another point in this state, whether the transportation of it is wholly in this state, or partly in this state and partly in an adjoining state or states. (2) Unless the context requires otherwise, in Title 72: (a) "Transportation" includes instrumentalities of shipment or carriage. (b) "Railroad" means a corporation, company, or individual owning or operating a railroad, in whole or in part, in this state. The term also includes express companies and sleeping-car companies. (c) "Commission" or "board" means the public service commission, provided for in section 82A-1702. This act applies to all persons, firms, or companies, incorporated or otherwise, that do business as common carriers on any of the lines of railroad in this state.

History: En. Sec. 11, Ch. 37, L. 1907; Sec. 4373, Rev. C. 1907; re-en. Sec. 3792, R. C. M. 1921; Sec. 72-114, R. C. M. 1947; amd. and redes. 72-101.1 by Sec. 12, Ch. 315, L. 1974.

Amendments

The 1974 amendment renumbered this

section; inserted "Unless the context requires otherwise, in Title 72" in subsection (2); substituted the first sentence of subdivision (2) (c) for a sentence defining "board" as the "board of railroad commissioners"; and made minor changes in phraseology, punctuation and style.

DECISIONS UNDER FORMER LAW

Judicial Interference

District court's writ of prohibition was vacated where it barred the board of railroad commissioners, ex officio the public service commission under former law,

from performing its duties concerning water company's application to increase rates and charges. State ex rel. Board of Railroad Comrs. v. District Court, 158 M 139, 488 P 2d 903.

72-102. (3780) Repealed.**Repeal**

Section 72-102 (Sec. 2, Ch. 37, L. 1907; Sec. 31, Ch. 177, L. 1965; Sec. 5, Ch. 7, L. 1973; Sec. 26, Ch. 100, L. 1973), relat-

ing to the oath of office for members of the railroad commission, was repealed by Sec. 24, Ch. 315, Laws 1974.

72-103. (3781) Meetings of commission—quorum—powers. The commission shall hold sessions at times and places in this state as may be expedient. A majority of the commission constitutes a quorum for the transaction of business. The members of the commission may administer oaths and affirmations. The commission may adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings concerning railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts required of it under the law.

History: En. Sec. 3, Ch. 37, L. 1907; Sec. 4365, Rev. C. 1907; re-en. Sec. 3781, R. C. M. 1921; amd. Sec. 10, Ch. 315, L. 1974.

Amendments

The 1974 amendment deleted a first sentence establishing the railroad board's office in Helena and requiring that it be

open during business hours; substituted the present first sentence for a sentence requiring sessions at least once each month in Helena and at other places when expedient; substituted "commission" for "board of railroad commissioners" and "board" in three places; and made minor changes in phraseology.

72-104. (3782) Repealed.**Repeal**

Section 72-104 (Sec. 4, Ch. 37, L. 1907), relating to the seal of the board of rail-

road commissioners, was repealed by Sec. 24, Ch. 315, Laws of 1974.

72-107. (3785) Expenses of commissioners and employees. Commissioners and the persons in their official employ, when traveling in the performance of their official duties, shall have a right to free transportation, and to have their actual and necessary traveling expenses paid.

History: En. Sec. 7, Ch. 37, L. 1907; Sec. 4369, Rev. C. 1907; re-en. Sec. 3785, R. C. M. 1921; amd. Sec. 11, Ch. 315, L. 1974.

Amendments

The 1974 amendment deleted a final

clause in the present sentence relating to expenses being passed upon and paid by the state board of examiners; deleted a second sentence relating to the state furnishing offices and office supplies; and made minor changes in phraseology.

72-111. (3789) Repealed.**Repeal**

Section 72-111 (Sec. 8, Ch. 37, L. 1907), relating to allowances for postage, express-

age and other incidental expenses, was repealed by Sec. 24, Ch. 315, Laws of 1974.

72-114. [Transferred.]**Compiler's Notes**

Section 12, Ch. 315, Laws of 1974 re-numbered this section as sec. 72-101.1.

72-117. (3795) Making schedules effective.**Compiler's Notes**

Section 20, Ch. 315, Laws 1974, substituted "commission" throughout this sec-

tion for "commissioners," "railroad commissioners," and "board."

72-118. Power to alter classification or rate—approval of changes or revisions by the board—hearing complaint. The said board shall have the power from time to time to change, alter, amend, or abolish any classification or rate established by it when deemed necessary, as hereinafter provided. The said board shall make and establish reasonable rates for the transportation of freight within the state of Montana, and shall prescribe rates, tolls and charges for all other service performed by any railroad subject hereto. No change or revision of any rate, charge, classification or rule of service contained in any tariff, classification or rule of a railroad shall be made by any railroad without first obtaining approval therefor from the board. Such changes or revisions shall be made by either of the methods hereinafter set forth:

(1). * * * [Same as parent volume.]

(2) by filing with the board the tariff sheet or sheets containing such changes or revisions, plainly stating the change or changes, or revision or revisions, to be made; provided further, that the public shall be provided with such notice of the proposed changes or revisions as the board shall, by rule, require. The tariff sheet or sheets containing such changes or revisions shall be deemed approved and effective thirty (30) days after the same are filed unless the proposed revisions or changes are suspended or disallowed by the board prior to the expiration of the thirty (30) day period; provided, however, that the board may, for good cause, allow any change or revision to become effective on less than thirty (30) days after the filing thereof. Upon filing such changes or revisions, all tariff sheet or sheets, when suspended by the board, must be supported by such prepared testimony and exhibits from the railroad as will support such changes or revisions. The prepared testimony and exhibits must be filed with the commission thirty (30) days after the effective date of such suspension. Such testimony and exhibits may be supplemented prior to, or at the time of hearing, and supplemental exhibits may be filed after the close of the hearing at the direction or with permission of the commission.

Upon its own initiative, or upon the complaint of any interested party filed with the board within twenty (20) days after the date upon which a change or revision of any rate, fare, charge or classification is filed with the board, the board may suspend the operation of such rate, fare, charge, or classification for a period not to exceed one hundred eighty (180) days, provided, however, that the order directing such suspension must be issued by the board not less than two (2) business days prior to the proposed effective date; and provided further, that the rail carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice by the complaining party mailing a copy of the complaint concerning such proposed change or revision to the carrier or publishing agent and such carrier or carriers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a rail carrier or carriers, notice to such bureau of

any complaint will constitute notice to the participating carriers in such tariff. When the suspension of any proposed change or revision in a tariff is ordered by the board, it shall also order a public hearing to consider the reasonableness of the proposed change or revision; due notice shall be given for such hearing to all known interests or affected persons and the same shall be allowed to appear and present evidence. After considering the evidence presented at such hearing, the board shall issue an order approving, denying, or modifying the proposed change or revision; provided, however, that unless such hearing is held and such order is issued within one hundred eighty (180) days from the date upon which the suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed.

The board may, on its own motion or on the complaint by a shipper or other person interested investigate any rate, classification or rule approved and in effect for transportation of freight by any railroad within the state of Montana. The said board must, within sixty (60) days after the commencement of an investigation on the board's initiative, or after the filing with such board of a complaint by a shipper, or other person interested, proceed to investigate and determine the justness and reasonableness of any classification, rate, charge, toll, regulation or order made by said board.

History: En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R. C. M. 1921; amd. Sec. 1, Ch. 227, L. 1971; amd. Sec. 1, Ch. 429, L. 1973.

Amendments

The 1973 amendment inserted the third, fourth and fifth sentences in subdivision (2); increased the time for filing a complaint under the second paragraph of subdivision (2) from fifteen to twenty days; extended the maximum period for suspension of a rate under the first sentence of the second paragraph of subdivision (2) from 120 to 180 days; substituted "by the complaining party mailing a copy of the complaint concerning such proposed change or revision to the carrier or

publishing agent" for "by the board of any complaint filed by any interested party to any proposed tariff change or revision" in the proviso to the first sentence of the second paragraph in subdivision (2); extended the period during which a hearing may be held as set forth near the end of the second paragraph of subdivision (2) from 120 to 180 days; and extended the time for determination of the justness of a rate as set forth in the second sentence of the third paragraph of subdivision (2) from forty to sixty days.

Effective Date

Section 2 of Ch. 429, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 22, 1973.

72-121. (3799) Duty of railroad company to report accidents.

Compiler's Notes

Section 20, Ch. 315, Laws 1974, substi-

tuted "commission" in this section for "board of railroad commissioners."

72-124. (3802) Attorney general as attorney for commission. The attorney general is the attorney of the commission, and the county attorney of every county in the state shall, on the request and at the direction of the attorney general, assist in all cases, proceedings, and investigations undertaken by the commission under this law, in his own county. However, the commission may employ special counsel, with the approval of the attorney general, to assist in any case, matter, proceeding, or investigation instituted under this law. The attorney general, upon direction of the commission, and the county attorney of each county in this state, upon direction of the attorney general, shall institute and prosecute, and appear and defend, any action

or proceeding arising under this law. All suits and proceedings filed in any court of this state, under this law, shall have precedence over all other business in the court, except criminal business and original proceedings in the supreme court.

History: En. Sec. 20, Ch. 37, L. 1907; Sec. 4383, Rev. C. 1907; re-en. Sec. 3802, R. C. M. 1921; amd. Sec. 13, Ch. 315, L. 1974.

Amendments

The 1974 amendment substituted "com-

mission" for "board" throughout the section; deleted a final sentence relating to the payment of fees and expenses of additional counsel; and made minor changes in phraseology and punctuation.

72-126, 72-127.

Compiler's Notes

Section 20, Ch. 315, Laws 1974, substi-

tuted "commission" in these sections for "board of railroad commissioners."

72-133 to 72-135.

Compiler's Notes

Section 20, Ch. 315, Laws 1974, substituted "commission" throughout these sec-

tions for "board of railroad commissioners," "board," "railroad commissioners," and "railroad commission."

72-136. (3813) Acceptance of favors and gratuities from railroads prohibited. A public service commissioner or the secretary may not, directly or indirectly, solicit or request from or recommend to any railroad corporation, or any officer, attorney, or agent thereof, the appointment of any person to any place or position. Nor shall any railroad corporation, its attorney, or agent, offer any place, appointment, or position or other consideration to such commissioners, or either of them, nor to any clerks or employees of the commission; neither shall the commissioners, or either of them, nor their secretary, clerks, agents, employees, or experts, accept, receive, or request any pass from any railroad in this state, for themselves or for any other person, except as herein otherwise provided, or any present, gift, or gratuity of any kind from any railroad corporation; and the request or acceptance by them, or either of them, except as herein specified, of any such place or position, pass, presents, gifts, or other gratuity, shall work a forfeiture of the office of the commissioner or commissioners, secretary, clerk or clerks, agent or agents, and employee or employees, expert or experts, requesting or accepting the same. Any person violating any of the provisions of this section is guilty of a misdemeanor.

History: En. Sec. 31, Ch. 37, L. 1907; Sec. 4394, Rev. C. 1907; re-en. Sec. 3813, R. C. M. 1921; amd. Sec. 14, Ch. 315, L. 1974.

Amendments

The 1974 amendment substituted "public service commissioner" for "railroad

commissioner" in the first sentence; deleted "or of the board" after "employees of the commission" in the first clause of the second sentence; deleted a second clause from the final sentence relating to fine and imprisonment; and made minor changes in phraseology.

72-141. (3818) Repealed.

Repeal

Section 72-141 (New section recommended by code commissioner, 1921), relating

to jurisdiction of the railroad commission over docks and wharves, was repealed by Sec. 24, Ch. 315, Laws of 1974.

72-142. (3819) Commission to inquire into observance of laws, etc.**Compiler's Notes**

Section 20, Ch. 315, Laws 1974, substi-

tuted "commission" in this section for "board of railroad commissioners."

72-145 to 72-147.**Compiler's Notes**

Section 20, Ch. 315, Laws 1974, substi-

tuted "commission" in these sections for "board of railroad commissioners."

72-150 to 72-152.**Compiler's Notes**

Section 20, Ch. 315, Laws 1974, substituted "commission" in these sections for

"railroad commission of the state of Montana."

72-156. (3834) Powers of commission as to stations and crossings.**Compiler's Notes**

Section 20, Ch. 315, Laws 1974, substituted "commission" throughout this sec-

tion for "board of railroad commissioners of the state of Montana" and "board of railroad commissioners."

72-158 to 72-160.**Compiler's Notes**

Section 20, Ch. 315, Laws 1974, substituted "commission" in these sections for

"board," "board of railroad commissioners of the state of Montana," and "board of railroad commissioners."

72-162 to 72-168.**Compiler's Notes**

Section 20, Ch. 315, Laws 1974, substituted "commission" throughout these sec-

tions for "board of railroad commissioners," "board," and "board of railroad commissioners of the state of Montana."

72-169. Protection of employees affected by closure of station. When any railroad, as defined in section 72-115 is granted the authority to close a railroad station or facility by order of the public service commission, it shall be incumbent on the commission to require employee protection. Before the commission may approve closure of a station or facility, it shall require from the railroad an agreement to protect employees affected by the closure by providing jobs equal in nature and pay to the job held by the employee for the six (6) months prior to such closure. The equal job and pay agreement must be in effect for a period of four (4) years or, in the alternative, the number of years the employee has been employed prior to closure, whichever is shorter. Notwithstanding any other provisions of this section, an agreement pertaining to protection of the interests of affected employees may be entered into between the railroad and duly authorized representatives of the employees.

History: En. Sec. 1, Ch. 377, L. 1973.

railroad employees affected by closure of railroad stations and facilities.

Title of Act

An act to provide for job protection for

72-170. Notice to be served on consumer counsel. In addition to all other forms of notice of hearings conducted by the commission provided for in this title, notices of all hearings shall be served upon the Montana consumer counsel.

History: En. 72-170 by Sec. 1, Ch. 185, L. 1974.

Title of Act

An act to provide for the giving of notice of public hearings regarding the

regulation of the business of railroads to the Montana consumer counsel; and to make reference to the availability of the Montana consumer counsel in notices of hearings by adding the following sections to Title 72, R. C. M. 1947.

72-171. Form of notice for public hearing. All forms of notice of public hearings conducted by the public service commission under this title, including all notices posted in public places or published in the legal advertising sections of newspapers, shall advise members of the consuming public of the existence of the office of the Montana consumer counsel and its availability to function on behalf of members of the consuming public.

History: En. 72-171 by Sec. 2, Ch. 185, L. 1974.

CHAPTER 4—LIABILITY OF RAILROADS FOR KILLING OR INJURING LIVESTOCK

Section

72-406. Company may deposit value of animal.

72-407. Payment of claim for damages to department of livestock.

72-409. Carcass and hide of animal.

72-406. (6545) Company may deposit value of animal. If a corporation, association, company, or person so owning, controlling, or operating a railroad or branch thereof, kills or injures an animal as aforesaid, and tenders to the owner or owners thereof, or to his or their agent in that behalf, the amount which they consider to be the value thereof, or the damage thereto, as the case may be; or if the railroad, corporation, association, company, or person, deposits with the department of livestock such amount for the owner or owners thereof; and the owner or owners, or his or their agent, refuses to accept the amount in settlement thereof, then the owner or owners shall pay all costs incurred in any action instituted, after the tender or deposit, to recover the value or damage, unless he or they recover in the action more than the amount so tendered.

History: En. Sec. 723, 5th Div. Comp. Stat. 1887; re-en. Sec. 956, Civ. C. 1895; re-en. Sec. 4314, Rev. C. 1907; re-en. Sec. 6545, R. C. M. 1921; amd. Sec. 15, Ch. 315, L. 1974.

Amendments

The 1974 amendment substituted "department of livestock" for "board of stock commissioners"; and made minor changes in phraseology.

72-407. (6546) Payment of claim for damages to department of livestock. (1) If livestock are killed by railroad corporations in violation of section 72-401 and if the owner of the livestock does not claim or assert a claim against the railroad or railroad corporation for the value of the livestock killed within six (6) months from the date the animal or animals are killed, the department of livestock shall demand from the railroad or railroad corporation payment in damages for livestock. The department of livestock shall institute and prosecute, in the name of the state, actions against the railroad or railroad companies in a court of competent jurisdiction to recover damages if the railroad fails, neglects, or refuses to make payment of the amount of the claim filed by the department of livestock.

(2) The money recovered shall be paid to the department of livestock, and shall be held by the department of livestock for a period of two (2) years after the date of its receipt. If the lawful owner of the animal killed does not present and prove his claim to the net proceeds received from the animal killed, within the two (2) years, the money shall be paid to the state treasurer and credited to the stock stray fund. If the owner of the animal killed proves his claim within the two (2) years, the department of livestock may pay the claimant the amount of money to which he is entitled for the animal or animals killed by the railroad or railroad company, the damages for which have been collected by the department of livestock.

(3) In actions prosecuted for the recovery of the value of livestock killed under this act, the prevailing or successful party shall recover all costs. If the owner of an animal or animals killed has not presented his claim against the railroad or railroad company which caused it to be killed, a settlement made by the department of livestock constitutes a bar against an action by the owner of the animal or animals.

History: En. Sec. 1, Ch. 183, L. 1907; Sec. 4315, Rev. C. 1907; amd. Sec. 2, Ch. 99, L. 1919; re-en. Sec. 6546, R. C. M. 1921; amd. Sec. 16, Ch. 315, L. 1974.

partment of livestock" for "secretary of the state livestock commission" and "livestock commission" throughout the section; and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "de-

72-409. (6548) Carcass and hide of animal. In all cases where a corporation, association, company, or person kills, or injures an animal to such extent that it is necessary to kill the animal, as provided in this chapter, they shall skin the animal, and preserve the whole hide, or so much thereof as can be preserved, including the head and ears, and are entitled to the carcass and hide thereof, unless the owner or owners thereof claim the animal, in which event the amount of the value thereof shall be deducted from the amount of damages which would otherwise be due. But, in case such corporation, association, company, or person, so entitled thereto, takes the carcass and hide, they shall skin the animal as herein provided, and shall deposit the hide thereof at the station designated on their line, such station to be designated by the department of livestock, during the space of sixty (60) days, for the inspection of persons claiming to be interested therein, and if no person claims the animal, then before the corporation, association, company, or person disposes of the hide, they shall notify the stock inspector of the district within which the animal was killed, who shall inspect the hide for marks and brands, and receive from the stock inspector his authority, in writing, to dispose of the hide. The stock inspector shall notify all owners of the stock, if known or ascertainable from the inspection, of the death of the animal, and if the owner is unknown, the stock inspector shall notify the department of livestock of the death of the animal. The corporation, association, company, or person may dispose of the whole animal, including the carcass and hide, to any licensed rendering plant or licensed renderer in the state, if the owner or owners do not claim the animal. Upon receiving the animal, the licensed rendering plant or licensed renderer shall skin the animal, and shall preserve the hide, or so much thereof as can be preserved, including the hide of head and ears, and the hide shall be stored

separate and apart from hides received from other sources. Within five (5) days after receipt of the hide, the licensed rendering plant or licensed renderer shall notify the department of livestock of possession of the hide. The department of livestock shall make an inspection thereof within ten (10) days after being so notified, and shall immediately notify the owner thereof, if ownership be ascertainable, of the death of the animal. If no person claims the hide of the animal within thirty (30) days after notice given to the department of livestock by the licensed renderer or licensed rendering plant, the department of livestock shall give written authorization to the licensed rendering plant or licensed renderer to dispose of the hide. Before making disposition thereof under the written authorization, the licensed rendering plant or licensed renderer shall obtain the consent of the corporation, association, company, or person from which the animal was received.

History: En. Sec. 726, 5th Div. Comp. Stat. 1887; re-en. Sec. 958, Civ. C. 1895; re-en. Sec. 4317, Rev. C. 1907; amd. Sec. 3, Ch. 99, L. 1919; re-en. Sec. 6548, R. C. M. 1921; amd. Sec. 1, Ch. 147, L. 1949; amd. Sec. 17, Ch. 315, L. 1974.

Amendments

The 1974 amendment substituted "department of livestock" for "secretary of the state livestock commission" in the

second and third sentences; substituted "department of livestock" for "state livestock inspector" in the sixth, seventh and eighth sentences; deleted a former eighth sentence reading "If the owner is unknown, the stock inspector shall notify the secretary of the livestock commission of the death of such animal"; and made minor changes in phraseology and punctuation.

CHAPTER 5—REGULATIONS CONCERNING RIGHT OF WAY FENCES AND CATTLE GUARDS

Section

72-507. [Transferred from Title 94.]

72-507. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-35-174. Section 29, Ch. 513, Laws of 1973, renumbered it to appear in this title.

Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as section 94-35-174.

CHAPTER 6—GENERAL REGULATION OF BUSINESS OF RAILROADS

Section

72-620. Persons or property may be transported free or at reduced rates in certain cases.

72-671, 72-672. [Transferred from Title 94.]

72-620. (6575) Persons or property may be transported free or at reduced rates in certain cases. No provisions of the laws of this state shall prevent any person, association, company, or corporation engaged as a common carrier of persons or property in this state, from carrying, storing, or handling property free, or at reduced rates, for the United States, state, or municipal governments, or for charitable institutions, or property which is being transported to or from fairs and expositions for exhibit thereat, or cars used by the government of the United States or state of Montana for the transportation of fish, for carrying free or at reduced rates agents and employees employed in such transportation, and nothing therein contained

shall prevent such person, association, company, or corporation from issuing free transportation, or selling tickets at reduced rates, to the following classes of persons:

- (1) Employees of the issuing road, and the members of their families.
- (2) Officers and employees of other railroads, and the members of their families upon the exchange of passes or tickets.
- (3) Doctors, nurses, and helpers being carried to wrecks.
- (4) Soldiers or sailors going to or coming from institutions for their keeping.

(5) Ministers of religion and persons engaged in charitable or religious work, and destitute or homeless persons being transported by charitable societies, or at public expense.

(6) Executive, judicial, or legislative officers of this state including the members of the faculty of the different educational institutions of the state. When free transportation, or a ticket at a reduced rate, is issued to any such officer, or any president or member of the faculty of any educational institution, it shall only be issued upon the application of the secretary of state, and the transportation, or ticket, shall be delivered to the secretary of state for delivery to the person or persons applying therefor, and the secretary of state shall keep record of all transportation and tickets at reduced rates so received and delivered by him. The state officer and the president and faculty of the state educational institutions when traveling upon any free transportation, may not charge any mileage against the state, or if traveling upon a ticket sold at reduced fare, they may not charge mileage in excess of the cost of the ticket.

History: En. Sec. 1, Ch. 53, L. 1913; re-en. Sec. 6575, R. O. M. 1921; amd. Sec. 18, Ch. 315, L. 1974.

Amendments

The 1974 amendment deleted "state game warden and his deputies," "mem-

bers of the state board of horticulture," "officers, trustees, or employees of the state fair," and "officers and inspectors of the livestock and sheep commission boards" from among the officers named in subdivision (6); and made minor changes in phraseology, punctuation and style.

72-627. (6582) Duty to furnish shipping facilities.

Compiler's Notes

Section 21, Ch. 315, Laws 1974, substituted "public service commission" in this

section for "board of railroad commissioners."

72-631 to 72-634. (6586 to 6589) Repealed.

Repeal

Sections 72-631 to 72-634 (Secs. 1 to 4, Ch. 87, L. 1905; Sec. 1, Ch. 250, L. 1921), relating to the establishment of passenger

rates at three cents per mile and providing for penalty for violations, were repealed by Sec. 24, Ch. 315, Laws of 1974.

72-662. (6619) Duty of commission to enforce law.

Compiler's Notes

Section 20, Ch. 315, Laws 1974, substituted "commission" in this section for

"railroad commission of the state of Montana."

72-664 (6621) Hearing of complaint by commission.

Compiler's Notes

Section 20, Ch. 315, Laws 1974, substituted "commission" throughout this sec-

tion for "board of railroad commissioners" and "board."

72-671, 72-672. [Transferred from Title 94.]**Compiler's Notes**

These sections were originally numbered 94-35-109 and 94-35-203. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not re-

printed here but may be found in bound Volume Eight as follows:

New Sec.**Vol. 8**

72-671

94-35-109

72-672

94-35-203

CHAPTER 7—RAILROAD CROSSINGS—REGULATION

72-703. (6627) Order of county commissioners, etc.**Compiler's Notes**

Section 21, Ch. 315, Laws 1974, substituted "public service commission" in this

section for "board of railroad commissioners of the state of Montana."

72-704 to 72-709.**Compiler's Notes**

Section 20, Ch. 315, Laws 1974, substituted "commission" throughout these sec-

tions for "board of railroad commissioners."

72-711. (6635) Penalty for failure to comply with order for construction.**Compiler's Notes**

Section 20, Ch. 315, Laws 1974, substi-

tuted "commission" in this section for "board of railroad commissioners."

TITLE 73—RECORDING TRANSFERS

Chapter

2. Effect of recording or failure to record conveyance of real property, 73-313.

CHAPTER 2—EFFECT OF RECORDING OR FAILURE TO RECORD CONVEYANCE OF REAL PROPERTY

Section

73-213. Validation of conveyances recorded after defective execution—1973 act.

73-202. (6935) Conveyances to be recorded, or are void, etc.

Fraudulent Conveyances

In determining the date of transfer of an alleged fraudulent conveyance under the Federal Bankruptcy Act, the date of transfer of an assignment of a note and mortgage was the date of recordation and not the date upon which the transfer was

effective between the parties since it is not until recordation that subsequent transferees or purchasers could not acquire an interest superior to that of the original transferee. *Raucci v. Davis*, — M —, 505 P 2d 887.

73-213. Validation of conveyances recorded after defective execution—1973 act. Any instrument affecting real property, provided no action is now pending to set such instrument aside which was, previous to January 1, 1973, copied into the proper book kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission or informality in the execution of the instrument or in the certificate of acknowledgment thereof, or the absence of any such certificate; and all such instruments heretofore acknowledged by the vice-president and assistant secretary of any corporation, or by either of them, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, and recorded, shall be valid and shall have the same force and effect as though acknowledged by the president or secretary; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 147, L. 1973.

Title of Act

An act validating certain instruments affecting real property and which were erroneously executed or acknowledged prior

to January 1, 1973; imparting notice by recording thereof; and providing that duly certified copies thereof may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded.

TITLE 74—SALES AND EXCHANGE

CHAPTER 2—STATUTES OF FRAUDS

74-203. (7593) Contract for sale of real property.

Memorandum

Prospective buyer was entitled to return of earnest money where realtor was unable to produce any written documenta-

tion of his alleged agency to sell realty. Paek River Co. v. Young, — M —, 511 P 2d 12.

CHAPTER 6—RETAIL INSTALLMENT SALES

74-603. Licensing of sales finance companies required.

Cross-References

Position of superintendent of banks

abolished and functions transferred, sec. 82A-402 (1).

74-608. Finance charge limitation.

Constitutionality

This act is constitutional both before and after the 1971 amendments making it applicable to revolving charge accounts; the finance charges permitted by this act are time price differentials included in the price of goods purchased on credit and payable in installments and as such are not subject to constitutional or statutory limitations on interest rates; the act is a codification of the time price doctrine; the act is not a special or local law regulating the rate of interest on money in violation of Art. V, Sec. 26 of the 1889 Constitution since the finance charges imposed pursuant to the act are time price differentials rather than interest and since there is a reasonable basis for the classification and different treatment of those involved in revolving charge transactions; the act does not grant special or

exclusive privileges as prohibited by Art. V, Sec. 26 of the 1889 Constitution or interfere with the right to acquire property guaranteed by Art. III, Sec. 3 of the 1889 Constitution since the legislative classifications in the act are constitutionally permissible. Cecil v. Allied Stores Corp., — M —, 513 P 2d 704.

Revolving Charge Account Sales

This act, prior to amendment in 1971, regulated only "closed end" retail installment contracts and not revolving charge accounts; retailer which imposed finance charges on revolving charge accounts on basis of balance from previous monthly billing cycle prior to 1971 amendment of this act was not in violation of this act since it was inapplicable. Cecil v. Allied Stores Corp., — M —, 513 P 2d 704.

TITLE 75—SCHOOLS

Chapter

- 56. Board of public education—board of regents—state board of education, 75-5609 to 75-5619.
- 57. Superintendent of public instruction, 75-5701, 75-5702, 75-5707, 75-5709.
- 58. County superintendent, 75-5801, 75-5802, 75-5811.
- 59. School district trustees and officers, 75-5903, 75-5912, 75-5914.1, 75-5915, 75-5916, 75-5931, 75-5933, 75-5941.
- 60. Teacher certification, 75-6001.
- 61. Employment of teachers, superintendents and principals, 75-6104, 75-6105.1, 75-6112, 75-6122, 75-6129 to 75-6132.
- 62. Teachers' retirement system, 75-6201, 75-6202, 75-6204, 75-6206 to 75-6208, 75-6212, 75-6213, 75-6219.
- 63. Compulsory attendance and tuition agreements, 75-6303, 75-6316, 75-6317, 75-6323.
- 64. School elections, 75-6404, 75-6410, 75-6412.
- 65. School district organization and reorganization, 75-6503, 75-6508, 75-6509, 75-6516.1, 75-6516.2, 75-6517, 75-6532, 75-6534.
- 66. Opening and closing of schools, 75-6601, 75-6608, 75-6609.
- 67. Budget system, 75-6711.
- 68. Financial administration, 75-6805, 75-6806, 75-6808, 75-6808.1 to 75-6809.1, 75-6810, 75-6811, 75-6811.1, 75-6812.
- 69. State equalization aid to public schools, 75-6902 to 75-6908, 75-6912, 75-6913, 75-6915 to 75-6918, 75-6921 to 75-6923, 75-6927.
- 70. School buses and transportation of pupils, 75-7001, 75-7002, 75-7004 to 75-7006, 75-7008, 75-7013, 75-7019.
- 71. School district and county school bonds, 75-7102 to 75-7104, 75-7107, 75-7116, 75-7121.
- 72. Elementary tuition and special purpose funds, 75-7201, 75-7202, 75-7204, 75-7214.
- 73. Public school fund, educational co-operative agreements and grants to schools, 75-7303.
- 74. School terms and holidays, 75-7402, 75-7403, 75-7406.
- 75. School accreditation, curriculum and adult education, 75-7502, 75-7504, 75-7507, 75-7511.
- 76. Textbooks, 75-7604, 75-7605, 75-7607.
- 77. Vocational and technical education, 75-7709.
- 78. Special education for exceptional children, 75-7801, 75-7805 to 75-7807, 75-7810, 75-7813.1.
- 79. Traffic education, 75-7906.
- 80. School food services, 75-8007.
- 81. Community college districts, 75-8107, 75-8113, 75-8122.
- 82. School sites, construction and leasing, 75-8205, 75-8206.1, 75-8211.
- 83. Miscellaneous provisions, 75-8305, 75-8305.1, 75-8308.1 to 75-8308.7.
- 85. Administration of university system, 75-8505.3.
- 86. Finance for university system, 75-8601, 75-8611 to 75-8614.
- 87. Students in university system, 75-8702, 75-8706 to 75-8711.
- 88. Miscellaneous provisions relating to university system, 75-8806.
- 90. Educational broadcasting commission, 75-9001 to 75-9004.
- 91. Work-study program, 75-9101 to 75-9111.
- 92. Proprietary post-secondary educational institutions—licensing, 75-9201 to 75-9223.
- 93. Commission on federal higher education programs, 75-9301 to 75-9303.

CHAPTER 56—BOARD OF PUBLIC EDUCATION—BOARD OF REGENTS —STATE BOARD OF EDUCATION

Section

- 75-5609. Definitions.
- 75-5610. Composition of boards—appointments—terms—oath.
- 75-5611. Appointment of commissioner of higher education—term—compensation—staff.
- 75-5612. Officers of boards—quorum.
- 75-5613. Quarterly meetings of boards—called meetings—notice of meetings.
- 75-5614. Per diem of board members—expenses.
- 75-5615. Combined boards as state board—budget review—officers—meetings—quorum.
- 75-5616. Adoption of rules—seal—record of proceedings.

- 75-5617. Division of powers among boards.
- 75-5618. Incumbent members of board of education retained—new appointments.
- 75-5619. Student representative on board of regents—term.

75-5601 to 75-5606. Repealed.

Repeal
 Sections 75-5601 to 75-5606 (Secs. 2 to 7, Ch. 5, L. 1971; Sec. 1, Ch. 352, L. 1971), relating to the board of education, were repealed by Sec. 16, Ch. 344, Laws 1973. For new law, see secs. 75-5609 to 75-5619. Board of education in repealed sections was created by sec. 82A-501.

75-5607. Powers and duties.

Cross-References
 Division of powers among boards, sec. 75-5617.

75-5608. Repealed.

Repeal
 Section 75-5608 (Sec. 9, Ch. 5, L. 1971), relating to powers and duties of board of education, was repealed by Sec. 16, Ch. 344, Laws 1973. For new law, see secs. 75-5609 to 75-5619.

75-5609. Definitions. (1) The board of public education is the board created by article X, section 9, subsection (3) of the 1972 Montana constitution.

(2) "Board of regents" means the board of regents of higher education created by article X, section 9, subsection (2) of the 1972 Montana constitution.

(3) The state board of education is the board composed of the board of public education and the board of regents as specified in article X, section 9, subsection (1) of the 1972 Montana constitution.

(4) "Commissioner" means the commissioner of higher education created by article X, section 9, subsection (2) of the 1972 Montana constitution.

History: En. Sec. 1, Ch. 344, L. 1973.

Title of Act

An act to create the board of public education and the board of regents of higher education, and to establish the state board of education as provided for by article X, section 9 of the 1972 Montana constitution; to assign powers and duties to the boards; to amend sections 79-2002 and 82-401, R. C. M. 1947; and to repeal sections 75-5601 through 75-5606 and 75-5608, R. C. M. 1947.

75-5610. Composition of boards — appointments — terms — oath. (1) The board of public education consists of seven (7) members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction, and commissioner are ex officio nonvoting members of the board of public education.

(2) The board of regents consists of seven (7) members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction and commissioner are ex officio nonvoting members of the board of regents.

(3) Appointments to the board of public education and to the board of regents are subject to the following qualifications:

- (a) Not more than four (4) may be from one (1) congressional district;
- (b) Not more than four (4) may be affiliated with the same political party;

(c) The terms of members appointed to each board shall be seven (7) years except as provided in section 11 [75-5619] of this act;

(d) When a vacancy occurs, the governor shall appoint a member for the remainder of the term of the incumbent, and such appointment shall preserve the balance required by subsections (a) and (b) above;

(e) A person may not be appointed to concurrent memberships on the board of public education and the board of regents.

(4) An appointed member of either board shall take and subscribe to the constitutional oath of office and file it with the secretary of state before he may serve as a member of either board.

History: En. Sec. 2, Ch. 344, L. 1973.

75-5611. Appointment of commissioner of higher education—term—compensation—staff. (1) There is a commissioner of higher education who is appointed by the board of regents.

(2) The board of regents shall prescribe the term and duties of the commissioner and shall set his compensation.

(3) The board of regents shall provide sufficient staff and office space to the commissioner for him to carry out his duties.

History: En. Sec. 3, Ch. 344, L. 1973.

75-5612. Officers of boards—quorum. (1) The board of public education and the board of regents shall each select a chairman from among their appointed members.

(2) The superintendent of public instruction shall serve as secretary to the board of public education, and the commissioner shall serve as secretary to the board of regents.

(3) A majority of the appointed members of each board constitutes a quorum for the transaction of business.

History: En. Sec. 4, Ch. 344, L. 1973.

75-5613. Quarterly meetings of boards—called meetings—notice of meetings. (1) The board of public education and the board of regents shall meet quarterly at the same location on the second Monday of April, July, September and December.

(2) Other meetings of either board may be called by the governor, by the chairman, by the secretary or by four (4) appointed members.

(3) The secretary to each board shall mail notice to each member at least seven (7) days in advance of all meetings of the respective board.

History: En. Sec. 5, Ch. 344, L. 1973.

75-5614. Per diem of board members—expenses. Appointed members of the board of public education and the board of regents are entitled to twenty-five dollars (\$25) per day and their necessary and actual expenses incurred for each day in attendance at board meetings or in the performance of any duty or service as a board member.

History: En. Sec. 6, Ch. 344, L. 1973.

75-5615. Combined boards as state board—budget review—officers—meetings—quorum. (1) The board of public education and the board of

regents meeting together as the state board of education shall be responsible for long-range planning, and for co-ordinating and evaluating policies and programs for the public educational systems of the state. The state board of education shall review and unify the budget requests of educational entities assigned by law to the board of public education, the board of regents, or the state board of education and shall submit a unified budget request with recommendations to the appropriate state agency.

(2) The governor is the president of, the superintendent of public instruction is the secretary to, and the commissioner shall be a nonvoting participant at all meetings of the state board of education.

(3) The state board of education may select a member to chair its meetings in the absence of the governor.

(4) A tie vote at any meeting may be broken by the governor.

(5) A majority of members appointed to the board of public education and the board of regents shall constitute a quorum for transaction of business as the state board of education.

(6) The board of public education and the board of regents shall meet at least twice yearly as the state board of education on any two of the dates specified in section 5, subsection (1) [75-5613 (1)].

(7) Other meetings of the state board of education may be called by the governor, by both the secretary to the board of public education and the secretary to the board of regents, or by joint action of eight (8) appointed members, four (4) each from the board of public education and the board of regents. All meetings of the state board of education shall be for the purposes set forth in subsection (1) above or for the purpose of considering other matters of common concern to the board of public education and the board of regents, but the state board of education may not exercise the powers and duties assigned by the 1972 Montana constitution and by law to the board of public education and the board of regents.

History: En. Sec. 7, Ch. 344, L. 1973.

Commission on Post-Secondary Education

Chapter 490, Laws of 1973, created a temporary commission on post-secondary

education to study and plan for post-secondary education in the state and to report its recommendations to the governor, the legislature and the state board of education by December 1, 1974.

75-5616. Adoption of rules—seal—record of proceedings. The board of public education, the board of regents, and the state board of education each shall:

(a) Adopt rules not inconsistent with the constitution or laws of the state of Montana, necessary for its own government or the proper execution of the powers and duties conferred upon it by law;

(b) Adopt and use an official seal to authenticate its official acts; and

(c) Keep a record of its proceedings.

History: En. Sec. 8, Ch. 344, L. 1973.

75-5617. Division of powers among boards. (1) The powers and duties assigned to the "board of education," "state board of education" or "state board for vocational education" in Title 75 and wherever else ap-

pearing in the Revised Codes of Montana, 1947, except in chapters 81 and 84 through 88 of Title 75, subsections (14) and (15) of 75-5607, sections 28-301 through 28-304, 44-213, 59-1111, 66-505 and 77-909 through 77-911 and except as provided in subsection (3) below, are hereby assigned to the board of public education created in article X, section 9, subsection (3) of the 1972 Montana constitution.

(2) The powers and duties assigned in chapters 81 and 84 through 88 of Title 75, R.C.M. 1947, and subsections (14) and (15) of 75-5607 R.C.M. 1947, as well as powers and duties assigned to the "state board of education ex officio regents," "state board of education of the state of Montana, ex officio regents of the Montana university system," "regents," "regents of the greater university system," "state board of regents" or "regents of the Montana system" wherever appearing in the Revised Codes of Montana, including those assigned to the "state board of education" and the "board of education" in sections 28-301 through 28-304, 44-213, 59-1111, 66-505 and 77-909 through 77-911 and excepting as provided in subsection (3) below, are hereby assigned to the board of regents of higher education created by article X, section 9, subsection (2) of the 1972 Montana constitution.

(3) The powers and duties assigned in chapters 1 and 5 of Title 82A, R.C.M. 1947, to the "state board of education" or the "board of education" are hereby assigned to the state board of education composed of the board of public education and the board of regents of higher education as specified in article X, section 9, subsection (1) of the 1972 Montana constitution.

History: En. Sec. 9, Ch. 344, L. 1973.

renumbered as sections 75-8612 to 75-8614 by Ch. 94, L. 1974.

Compiler's Notes

Sections 77-909 to 77-911 cited in subsections (1) and (2) were amended and

75-5618. Incumbent members of board of education retained—new appointments. (1) It is the intent of the legislature to provide smooth transition from the board of education provided for by the 1889 constitution to the board of public education and to the board of regents both created by the 1972 Montana constitution.

(2) In accordance with section 6, subsection (3) of the transition schedule of the 1972 Montana constitution, members of the 1889 board of education appointed before July 1, 1973, may continue to serve for the term to which each was appointed. A member appointed to the 1889 board of education before July 1, 1973, who chooses to fulfill his term of office may resign from the 1889 board of education and shall notify the governor of his resignation on or before July 1, 1973; and the governor shall appoint him on or before July 1, 1973, to serve on either the board of public education or the board of regents for the remainder of the term for which he was appointed.

(3) Appointments to fill vacancies existing on July 1, 1973, on the board of public education and on the board of regents:

(a) shall be made on or before July 1, 1973, so as to assure full membership on each board; and

(b) shall be for such number of months or years as will cause the expiration of one term on each board on February 1 of each year thereafter.

(4) Appointments to each board in succeeding years shall be made in accordance with section 2, subsection (3)(c) [75-5610 (3) (c)] of this act.

History: En. Sec. 10, Ch. 344, L. 1973.

75-5619. Student representative on board of regents—term. (1) One seat of the appointed members on the board of regents shall be reserved for membership by a student appointed by the governor.

(2) The student shall be registered as a full-time student at a unit of higher education under jurisdiction of the board of regents.

(3) The length of term of the student member shall be determined by the governor for not less than one (1) year and not more than four (4) years.

(4) The provisions of section 2, subsections (3)(a) and (b) [75-5610 (3)(a) and (b)] of this act shall not apply to the student member and shall not affect the balance of the remaining appointive membership on the board of regents.

History: En. Sec. 11, Ch. 344, L. 1973.

CHAPTER 57—SUPERINTENDENT OF PUBLIC INSTRUCTION

Section

75-5701. Definition.

75-5702. Election and qualification.

75-5707. Powers and duties.

75-5709. Controversy appeal.

75-5701. Definition. As used in this title, unless the context clearly indicates otherwise, “superintendent of public instruction” means that state government official designated as a member of the executive branch by the constitution of Montana.

History: En. 75-5701 by Sec. 10, Ch. 5, L. 1971; amd. Sec. 27, ch. 100, L. 1973.

“executive branch” for “executive department”; and deleted “section 1 of article VII of” before “the constitution.”

Amendments

The 1973 amendment substituted “execu-

75-5702. Election and qualification. A superintendent of public instruction for the state of Montana shall be elected by the qualified electors of the state at the general election preceding the expiration of the term of office of the incumbent.

Any person shall be qualified to assume the office of superintendent of public instruction who:

- (1) is twenty-five (25) years of age or older at the time of his election;
- (2) to (4). * * * [Same as parent volume.]

History: En. 75-5702 by Sec. 11, Ch. 5, L. 1971; amd. Sec. 1, Ch. 17, L. 1973.

requirement in subdivision (1) from thirty to twenty-five years; and made minor changes in phraseology.

Amendments

The 1973 amendment reduced the age

75-5707. Powers and duties. The superintendent of public instruction shall have the general supervision of the public schools and districts of the state, and he shall have the power and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

- (1) to (16). * * * [Same as parent volume.]

(17) distribute state equalization aid in support of the foundation program in accordance with the provisions of sections 75-6908, 75-6918, and 75-6919;

(18) estimate the state-wide equalization level for the foundation program in accordance with the provisions of section 75-6920;

(19) to (35). * * * [Same as parent volume.]

(36) administer the school food services program in accordance with the provisions of sections 75-8002, 75-8003, and 75-8004;

(37) to (41). * * * [Same as parent volume.]

History: En. 75-5707 by Sec. 16, Ch. 5, L. 1971; amd. Sec. 2, Ch. 137, L. 1973.

Amendments

The 1973 amendment deleted "state interest and income moneys and" after "distribute" at the beginning of subdivi-

sion (17); deleted "the state-wide per census child payment for the state interest and income moneys and" after "estimate" at the beginning of subdivision (18); deleted from the end of subdivision (18) a reference to section 75-6911; and made minor changes in phraseology.

75-5708. Repealed.

Repeal

Section 75-5708 (Sec. 17, Ch. 5, L. 1971), relating to the school census and

the distribution of state interest and income moneys, was repealed by Sec. 15, Ch. 137, Laws 1973.

75-5709. Controversy appeal. The superintendent of public instruction shall decide matters of controversy when they are appealed from:

(1) and (2) * * * [Same as parent volume.]

The superintendent of public instruction shall make his decision on the basis of the transcript of the fact-finding hearing conducted by the county superintendent or county transportation committee and documents presented at the hearing. The superintendent of public instruction may require, if he deems necessary, affidavits, verified statements, or sworn testimony as to the facts in issue. The decision of the superintendent of public instruction shall be final, subject to the proper legal remedies in the state courts. Such proceedings shall be commenced no later than sixty (60) days after the date of the decision of the superintendent of public instruction.

In order to establish a uniform method of hearing and determining matters of controversy arising under this title, the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state.

History: En. 75-5709 by Sec. 18, Ch. 5, L. 1971; amd. Sec. 1, Ch. 300, L. 1974.

Amendments

The 1974 amendment rewrote the paragraph following clause (2) which read: "The superintendent of public instruction shall make his decision on the basis of

the transcript of the fact-finding hearing conducted by the county superintendent or county transportation committee, documents presented at the hearing, affidavits, verified statements, or sworn testimony as to the facts in issue. The decision of the superintendent of public instruction shall be final, subject to adjudication or the proper legal remedies in the state courts."

75-5710, 75-5711. Repealed.

Repeal

Sections 75-5710 and 75-5711 (Secs. 1, 2, Ch. 372, L. 1971), relating to educational

television, were repealed by Sec. 7, Ch. 215, Laws 1974. For present provisions see Sec. 75-9001 et seq.

CHAPTER 58—COUNTY SUPERINTENDENT

Section

75-5801. **Definition.**75-5802. **Election and qualification.**75-5811. **Controversy appeals and hearings.**

75-5801. Definition. As used in this title, unless the context clearly indicates otherwise, "county superintendent" means the county government official who is the school officer of the county.

History: En. 75-5801 by Sec. 19, Ch. 5, L. 1971; amd. Sec. 28, Ch. 100, L. 1973.

is the school officer of the county" at the end of the section for "designated as the school officer of the county by section 5 of article XVI of the constitution of Montana."

Amendments

The 1973 amendment substituted "who

75-5802. Election and qualification. A county superintendent shall be elected in each county of the state unless a county manager form of government has been organized in the county. The county superintendent shall be elected at the general election preceding the expiration of the term of office of the incumbent.

Any person shall be qualified to assume the office of the county superintendent who:

(1) is a qualified elector;

(2) and (3). * * * [Same as parent volume.]

History: En. 75-5802 by Sec. 20, Ch. 5, L. 1971; amd. Sec. 29, Ch. 100, L. 1973.

clause (1) for a clause reading "possesses the qualifications required by the constitution of the state of Montana."

Amendments

The 1973 amendment substituted a new

75-5810. Repealed.**Repeal**

Section 75-5810 (Sec. 28, Ch. 5, L. 1971),

relating to the school census, was repealed by Sec. 15, Ch. 137, Laws 1973.

75-5811. Controversy appeals and hearings. The county superintendent shall hear and decide all matters of controversy arising in his county as a result of decisions of the trustees of a district in the county. When appeals are made under section 75-6104 relating to the termination of services of a tenure teacher or under section 75-6107 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney at law to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the superintendent of public instruction under the provisions for appeal of controversies in this title. Furthermore, he shall hear and decide all controversies arising under:

(1) section 75-6315 or 75-6316 relating to the approval of tuition applications; or

(2) any other provision of this title for which a procedure for resolving controversies is not expressly prescribed.

The county superintendent shall hear the appeal and take testimony in order to determine the facts related to the controversy and may administer

oaths to the witnesses that testify at the hearing. He shall prepare a written transcript of the hearing proceedings. The decision on the matter of controversy which is made by the county superintendent shall be based upon the facts established at such hearing.

The decision of the county superintendent may be appealed to the superintendent of public instruction and, if it is appealed, the county superintendent shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the superintendent of public instruction.

History: En. 75-5811 by Sec. 29, Ch. 5, L. 1971; amd. Sec. 1, Ch. 306, L. 1974.

Amendments

The 1974 amendment inserted the second sentence in the first paragraph; de-

leted a clause (2), relating to decisions of controversies arising under section 75-6104 on termination of services of a tenure teacher; and designated former clause (3) as (2).

CHAPTER 59—SCHOOL DISTRICT TRUSTEES AND OFFICERS

Section

75-5903.	Request and determination of number of high school district additional trustee positions.
75-5912.	Annual election.
75-5914.1.	Nomination of candidates by petition in first class elementary district.
75-5915.	Conduct of election and ballot.
75-5916.	Qualification and oath.
75-5931.	Travel reimbursement and joint board of trustees secretary compensation.
75-5933.	Powers and duties.
75-5941.	Personal liability of trustees.

75-5903. Request and determination of number of high school district additional trustee positions. As provided in subsection (2) (b) of section 75-5902, each high school district, except a high school district operating a county high school, may have additional trustee positions when the trustees of a majority of the elementary districts with territory located in the high school district, but without representation on the high school district trustees under the provision of subsection (2) (a) of section 75-5902, request the establishment of such additional trustee positions.

A request for additional trustee positions shall be made to the county superintendent by a resolution of the trustees of each elementary district. When a resolution has been received from a majority of the elementary districts without representation on the high school district trustees, the county superintendent shall determine the number of additional trustee positions for the affected high school district in accordance with the following procedure:

(1) to (3). * * * [Same as parent volume.]

The number determined in subsection (3) above shall be the number of additional trustee positions except that the number of additional trustee positions shall not exceed four (4) in a first or second class high school district or two (2) in a third class high school district except when two-thirds (2/3) or more of the high school enrollment of the high school district and two-thirds (2/3) or more of the taxable valuation of the high school district are located outside of the elementary district which has its trustees placed on the high school district trustees. When this situation

exists, three (3) additional trustees shall be elected from the elementary school districts where the high school is not located and one (1) additional trustee shall be elected at large in the high school district.

History: En. 75-5903 by Sec. 32, Ch. 5, L. 1971; amd. Sec. 1, Ch. 328, L. 1973.

Amendments

The 1973 amendment combined the two final paragraphs; deleted provision for the designation of an additional trustee position by the county superintendent; in-

serted "When this situation exists, three (3) additional trustees shall be elected from the elementary school districts where the high school is not located" in the final sentence; and substituted "one (1) additional trustee" for "The person who fills such additional trustee position" in the final sentence.

75-5912. Annual election. In each district an election of trustees shall be conducted annually on the regular school election day, the first Tuesday of April. Election of trustees shall comply with the election provisions of this title.

History: En. 75-5912 by Sec. 41, Ch. 5, L. 1971; amd. Sec. 2, Ch. 109, L. 1974.

Amendments

The 1974 amendment substituted "the first Tuesday of April" for "the first Saturday of April" in the first sentence and deleted "unless an election of trustees is

excused under the provisions of section 75-5914" at the end of the first sentence.

Effective Date

Section 3 of Ch. 109, Laws 1974 read "This act shall become effective on January 1, 1975."

75-5914. Repealed.

Repeal

Section 75-5914 (Sec. 43, Ch. 5, L. 1971), relating to nomination of trustee candidates in first class elementary districts by a nominating caucus, was re-

pealed by Sec. 3, Ch. 165, Laws 1973. For new law, see sec. 75-5914.1. Section 1 of Ch. 259, Laws 1973 purported to amend this section. Under the provisions of section 43-515, the amendment is void.

75-5914.1. Nomination of candidates by petition in first class elementary district. Any twenty (20) electors qualified under the provisions of section 75-6410 of any first class elementary district may nominate by petition as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy shall be submitted to the clerk of the district not less than forty (40) days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated shall also be indicated. The election shall be conducted with the ballot as specified in section 75-5915.

History: En. 75-5914.1 by Sec. 1, Ch. 165, L. 1973.

Title of Act

An act providing for nomination by

petition in first class elementary districts; amending section 75-5915, R. C. M. 1947; and repealing section 75-5914, R. C. M. 1947.

75-5915. Conduct of election and ballot. The trustees of each district shall call a trustee election on the regular school election day of each school fiscal year under the provisions of section 75-6406, except as provided in section 75-5914.1. The trustees shall call and conduct the trustee election in the manner prescribed in this title for school elections. Any elector qualified to vote under the provisions of section 75-6410 may vote at a trustee election. The trustee election ballots shall be substantially in the following form:

OFFICIAL BALLOT
SCHOOL TRUSTEE ELECTION

INSTRUCTIONS TO VOTERS: * * * [Same as parent volume.]

In preparing the ballots, only those portions of the prescribed ballot that are applicable to the election to be conducted need to be used. The ballot also shall be prepared with blank lines and vacant squares in front of the lines in a sufficient number to allow write-in voting for each trustee position that is subject to election.

When additional trustees in a high school district are to be elected, a separate ballot shall be used in each nominating district showing only the names of those candidates for which the electors of such district are entitled to vote.

History En. 75-5915 by Sec. 44, Ch. 5, L. 1971, amd. Sec. 2, Ch. 165, L. 1973; amd. Sec. 2, Ch. 259, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 165 and once by Ch. 259. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 165, Laws of 1973, changed the

statutory reference in the first sentence from 75-5914 to 75-5914.1; and deleted "except that write-in voting shall not be available in a first class elementary district" from the end of the second paragraph.

Chapter 259, Laws of 1973, deleted the reference to section 75-5914 at the end of the first sentence and made an additional deletion identical to that made by chapter 165.

Repealing Clause

Section 3 of Ch. 165, Laws 1973 read "Section 75-5914, R. C. M. 1947, is repealed."

75-5916. Qualification and oath. Any person who receives a certificate of election as a trustee under the provisions of section 75-6423 shall not assume the trustee position until he has qualified. Such person shall qualify by completing and filing an oath of office with the county superintendent not more than fifteen (15) days after the receipt of the certificate of election. After a person has qualified for a trustee position, he shall hold such position for the term of the position and until his successor has been elected or appointed and has been qualified.

If the elected person does not qualify in accordance with this requirement, a person shall be appointed in the manner provided by section 75-5918 and shall serve until the next regular election.

History: En. 75-5916 by Sec. 45, Ch. 5, L. 1971; amd. Sec. 1, Ch. 91, L. 1973.

Amendments

The 1973 amendment substituted "more" for "less" in the second sentence of the first paragraph.

75-5931. Travel reimbursement and joint board of trustees secretary compensation. The members of the trustees of any district shall not receive compensation for their services as trustees, except that the secretary of the trustees of a high school district operating a county high school or the secretary of a joint board of trustees may be compensated for his services as the secretary. The members of the trustees who reside over three (3) miles from the trustees' meeting place shall be reimbursed at the rate as provided in section 59-801, R. C. M. 1947 for every mile

necessarily traveled between their residence and the meeting place, and return in attending the regular and special meetings of the trustees, and all trustees shall be similarly reimbursed for meetings called by the county superintendent. The travel reimbursement may be accumulated during the school fiscal year and paid at the end of the fiscal year, at the discretion of each trustee.

History: En. 75-5931 by Sec. 60, Ch. 5, 1947" near the middle of the section for L. 1971; amd. Sec. 1, Ch. 62, L. 1974. "eight cents (\$.08)."

Amendments

Effective Date

The 1974 amendment substituted "at the rate as provided in section 59-801, R. C. M.

Section 2 of Ch. 62, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 2, 1974.

75-5932. General powers and duties and record of acts.

Equal Protection

Enforcement of a local school district rule prohibiting married students from engaging in extracurricular high school activities, including varsity football, was

enjoined on the ground that the regulation constituted a denial of equal protection by discriminating against married persons without a rational basis. *Moran v. School Dist. No. 7*, 350 F Supp 1180.

75-5933. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall have the power and it shall be its duty to perform the following duties or acts:

(1) employ or dismiss a teacher, principal or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board may deem necessary, accepting or rejecting such recommendation as the trustees shall in their sole discretion determine, in accordance with the provisions of the school personnel chapter of this title;

(2) to (16). * * * [Same as parent volume.]

(17) establish and maintain the school food services of the district in accordance with the provisions of the school food services chapter of this title;

(18) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of education or the rules and regulations of the superintendent of public instruction; and

(19) may require that all children at the time they are first enrolled in school, or within a reasonable time thereafter, be successfully immunized against those communicable diseases, as recommended by the state department of health and environmental sciences.

The immunizations required and the manner and frequency of their administration shall conform to recognized standards of medical practice and shall be set by the state department of health and environmental sciences.

A child may be exempted from this requirement upon certification from a licensed physician stating that the physical condition of the child is such that the immunization would seriously endanger his life or health, or a written statement signed by one (1) parent or guardian that he is an adherent

of a religious denomination whose religious teachings are opposed to the immunization.

History: En. 75-5933 by Sec. 62, Ch. 5, L. 1971; amd. Sec. 1, Ch. 69, L. 1973; amd. Sec. 1, Ch. 280, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 69, and once by Ch. 280. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 69, Laws of 1973, added subdivision (19), including the last two paragraphs of the section.

Chapter 280, Laws of 1973, substituted "other assistant" for "district superintendent" in subdivision (1); and inserted "upon the recommendation of the district superintendent, . . . sole discretion determined" in subdivision (1).

Subd. 18, Equal Protection

Enforcement of a local school district rule prohibiting married students from engaging in extracurricular high school activities, including varsity football, was enjoined on the ground that the regulation constituted a denial of equal protection by discriminating against married persons without a rational basis. *Moran v. School Dist. No. 7*, 350 F Supp 1180.

75-5936 to 75-5938. Repealed.

Repeal

Sections 75-5936 to 75-5938 (Secs. 65 to 67, Ch. 5, L. 1971), relating to the school

census, were repealed by Sec. 15, Ch. 137, Laws 1973.

75-5941. Personal liability of trustees. The trustees of each district shall be responsible for the proper administration and utilization of all moneys of the district in accordance with the provisions of law and this title. Failure or refusal to do so shall constitute grounds for removal from office. Those trustees consenting to illegal use of the moneys shall be jointly and individually liable to the district for any losses the district has realized. The county attorney shall prosecute any proceeding arising pursuant to this section, or a party seeking such action may retain private counsel. The party commencing the action shall be liable for the costs if the action fails.

History: En. 75-5941 by Sec. 70, Ch. 5, L. 1971; amd. Sec. 2, Ch. 91, L. 1973.

Amendments

The 1973 amendment substituted "illegal" for "improper" in the third sentence.

CHAPTER 60—TEACHER CERTIFICATION

Section

75-6001. System of teacher certification—student teacher exception.

75-6001. System of teacher certification—student teacher exception. In order to establish a uniform system of quality education and to ensure the maintenance of professional standards, a system of teacher certification shall be established and maintained under the provisions of this title and no person shall be permitted to teach in the public schools of the state until he has obtained a teacher certificate or the district has obtained an emergency authorization of employment from the state.

The above certification requirement shall not apply to a student teacher who is hereby defined as a student enrolled in an institution of higher

learning approved by the board of regents of higher education for teacher training and who is jointly assigned by such institution of higher learning and the governing board of a district or a public institution to perform practice teaching in a nonsalaried status under the direction of a regularly employed and certificated teacher.

A student teacher, while serving such nonsalaried internship under the supervision of a certificated teacher, shall be accorded the same protection of the laws as that accorded a certificated teacher, and shall, while acting as such student teacher, comply with all rules and regulations of the governing board of the district or public institution and the applicable provisions of section 75-6108 relating to the duties of teachers.

History: En. 75-6001 by Sec. 71, Ch. 5, L. 1971; amd. Sec. 1, Ch. 396, L. 1973.

Amendments

The 1973 amendment added the second and third paragraphs.

75-6002. Board of education policies.

Cross-References

Board of public education to exercise powers and duties, sec. 75-5617 (1).

75-6010. Suspension, revocation and denial—appeals.

Cross-References

Board of public education to exercise powers and duties, sec. 75-5617 (1).

CHAPTER 61—EMPLOYMENT OF TEACHERS, SUPERINTENDENTS AND PRINCIPALS

Section

- 75-6104. Termination of tenure teacher services.
- 75-6105.1. Notification of nontenure teacher re-election.
- 75-6112. Appointment and dismissal of district superintendent or county high school principal.
- 75-6122. Ratification of agreements.
- 75-6129. Policy to recognize heritage of American Indians.
- 75-6130. Definitions.
- 75-6131. Teachers of Indian children to be qualified in Indian studies—trustees and noncertified personnel.
- 75-6132. Other schools encouraged to comply with requirements on Indian studies.

75-6104. Termination of tenure teacher services. Whenever the trustees of any district resolve to terminate the services of a tenure teacher under the provisions of subsection (1) of section 75-6103, they shall notify such teacher in writing by registered letter or by personal notification for which a signed receipt is returned before the first day of April of such termination. Such notification shall include a printed copy of section 75-6104, R. C. M. 1947, for the teacher's information. Any tenure teacher who receives a notice of termination may request, in writing ten (10) days after the receipt of such notice, a written statement declaring clearly and explicitly the specific reason or reasons for the termination of his services, and the trustees shall supply such statement within ten (10) days after the request. Within ten (10) days after the tenure teacher receives the statement of reasons for termination, he may request in writing a hearing before the trustees to reconsider their termination ac-

tion. When a hearing is requested, the trustees shall conduct such a hearing and reconsider their termination action within ten (10) days after the receipt of the request for a hearing. If the trustees affirm their decision to terminate the teacher's employment, the tenure teacher may appeal their decision to the county superintendent who may appoint a qualified attorney at law as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or the trustees may appeal to the superintendent of public instruction under the provision for the appeal of controversies in this title.

History: En. 75-6104 by Sec. 85, Ch. 5, L. 1971; amd. Sec. 1, Ch. 157, L. 1974; amd. Sec. 2, Ch. 306, L. 1974.

Amendments

Chapter 157, Laws of 1974, inserted "by registered letter or by personal notification for which a signed receipt returned" after "in writing" in the first sentence and inserted the second sentence.

Chapter 306, Laws of 1974, inserted the provision for appointment of an attorney by the county superintendent in the next to last sentence and made a minor change in punctuation.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 157 and once by Ch. 218. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

DECISIONS UNDER FORMER LAW

Notice of Dismissal

Certified letter from chairman of school board to tenure teacher which informed teacher that termination of her services was deemed necessary due to a drop in enrollment of her class was legally sufficient as a notice; this section does not require that the notice contain a statement of appeal procedure. *Schweigert v. Board of Trustees of Evergreen School Dist. No. 50*, — M —, 515 P 2d 85.

Teacher's Petition for Reconsideration of Termination

Teacher who failed to file petition for a formal hearing to reconsider termination until more than forty-five days after receiving notice of termination failed to file request in a timely manner and the right to a hearing under this section had expired; fact that board reaffirmed its decision forty days after receipt of original notification did not revive expired rights. *Schweigert v. Board of Trustees of Evergreen School Dist. No. 50*, — M —, 515 P 2d 85.

75-6105.1. Notification of nontenure teacher re-election. The trustees shall provide written notice to all nontenure teachers who have been re-elected by the first day of April. Any nontenure teacher who does not receive notice of re-election or termination shall be automatically re-elected for the ensuing school fiscal year. Any nontenure teacher who receives notification of his re-election for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of such re-election within twenty (20) days after the receipt of the notice of re-election. Failure to so notify the trustees within twenty (20) days may be considered nonacceptance of the tendered position. The provisions of this section shall not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed.

History: En. Sec. 1, Ch. 324, L. 1973.

nontenure teachers regarding their election or termination for the following year.

Title of Act

An act providing for notification of

75-6112. Appointment and dismissal of district superintendent or county high school principal. The trustees of any high school district, except a county high school, and the trustees of the elementary district where its high school building is located shall jointly employ and appoint a district superintendent. The trustees of a county high school shall employ and appoint a district superintendent except that they may employ and appoint a holder of a class 3 teacher certificate with a district superintendent endorsement as the county high school principal in lieu of a district superintendent. The trustees of any other district may employ and appoint a district superintendent.

Whenever a joint board of trustees has been formed by a county high school and the elementary district where the county high school is located, such joint board shall jointly employ and appoint a district superintendent. During the term of contract of the jointly appointed district superintendent, neither district shall separately employ and appoint a district superintendent or county high school principal.

The written contract of employment of a district superintendent or a county high school principal shall be authorized by the proper resolution of the trustees of the district or the joint board of trustees, and executed in duplicate by the chairman of the trustees or joint board of trustees and the clerks of the districts, in the name of the districts, and by the district superintendent or the county high school principal. Such contract shall be for a term of not more than three (3) years and, after the second successive contract, the contract shall be deemed to be renewed for a further term of one (1) year from year to year thereafter unless the trustees shall, by resolution passed by a majority vote of its membership, resolve to terminate the services of the district superintendent or the county high school principal at the expiration of his existing contract. The trustees shall take such termination action and notify the district superintendent or the county high school principal in writing of their intent to terminate his services at the expiration of his current contract not later than the first day of February of the last year of such contract.

Whenever a joint board of trustees employs a person as the district superintendent, the elementary district and the county high school shall prorate the compensation provided by the contract of employment on the basis of the number of teachers employed by each district.

At any time the class 3 teacher certification or the endorsement of the certificate of a district superintendent or a county high school principal that qualifies such person to hold such position becomes invalid, the trustees of the district or the joint board of trustees shall discharge such person as the district superintendent or county high school principal regardless of the unexpired term of his contract. The trustees shall not compensate him under the terms of his contract for any services rendered subsequent to the date of the invalidation of his teacher certificate.

No district superintendent or county high school principal shall engage in any work or activity which the trustees may deem to be in conflict with his duties and employment as the district superintendent or county high school principal.

History: En. 75-6112 by Sec. 93, Ch. 5, L. 1971; amd. Sec. 1, Ch. 105, L. 1973.

Amendments

The 1973 amendment inserted "in writing" in the last sentence of the third paragraph.

75-6122. Ratification of agreements. All professional negotiation agreements reduced to writing and executed by an employer and the representative of teachers must be ratified by a majority of the teachers in the appropriate unit before becoming binding upon the parties. If a professional negotiation agreement is executed by a professional negotiation agent of the employer it must be ratified by a majority of the board of the employer.

Any individual contract between the board and an individual teacher shall be subject to and consistent with the terms and conditions of the professional negotiations agreement involving that appropriate unit of which the teacher is a member. If an individual contract contains any language inconsistent with the professional negotiations agreement, the professional negotiations agreement during its duration shall be controlling.

History: En. Sec. 8, Ch. 424, L. 1971; amd. Sec. 1, Ch. 151, L. 1974.

Amendments

The 1974 amendment added the second paragraph.

75-6129. Policy to recognize heritage of American Indians. It is the constitutionally declared policy of this state to recognize the distinct and unique cultural heritage of the American Indians and to be committed in its educational goals to the preservation of their cultural heritage. It is the intent of this act, predicated on the belief that school personnel should relate effectively with Indian students and parents, to provide means by which school personnel will gain an understanding of and appreciation for the American Indian people.

History: En. Sec. 1, Ch. 464, L. 1973.

Title of Act.

An act requiring American Indian studies to be part of the educational background of public school teaching personnel employed on, or in public schools located

in the vicinity of, Indian reservations where the enrollment of Indian children qualifies the school for federal funds for Indian education programs, and encouraging American Indian studies as part of the educational background of all school personnel employed in the state.

75-6130. Definitions. (1) As used in this act, "American Indian studies" means instruction pertaining to the history, traditions, customs, values, beliefs, ethics and contemporary affairs of American Indians, particularly Indian tribal groups in Montana.

(2) As used in this act, "instruction" means

(a) a formal course of study offered by a unit of higher education developed with the advice and assistance of Indian people;

(b) in-service training developed by the superintendent of public instruction in co-operation with educators of Indian descent and made available to school districts; or

(c) in-service training provided by a local board of trustees, which is developed and conducted in co-operation with local Indian people.

History: En. Sec. 2, Ch. 464, L. 1973.

75-6131. Teachers of Indian children to be qualified in Indian studies—trustees and noncertified personnel. (1) By July 1, 1979, all boards of trustees for elementary and secondary public school districts on, or in public schools located in the vicinity of, Indian reservations where the enrollment of Indian children qualifies the school for federal funds for Indian education programs, shall employ only those certified personnel who have satisfied the requirements for instruction in American Indian studies as defined in section 2 [75-6130] of this act.

(2) Members of boards of trustees and all noncertified personnel in public school districts on or in the vicinity of Indian reservations are encouraged to satisfy the requirements for instruction in American Indian studies as defined in section 2 [75-6130] of this act.

History: En. Sec. 3, Ch. 464, L. 1973.

75-6132. Other schools encouraged to comply with requirements on Indian studies. Boards of trustees for all public school districts other than those defined in section 3 [75-6131] above and governing authorities for all nonpublic schools in Montana are encouraged to comply with the provisions and intent of this act.

History: En. Sec. 4, Ch. 464, L. 1973.

CHAPTER 62—TEACHERS' RETIREMENT SYSTEM

Section

- 75-6201. Definitions.
- 75-6202. Retirement system.
- 75-6204. Per diem and expenses.
- 75-6206. Financial administration of moneys.
- 75-6207. Method of financing.
- 75-6208. Benefits.
- 75-6212. Membership application and creditable service.
- 75-6213. Creditable service for out-of-state employment, employment while on leave, for active service in the armed forces of the United States and the American red cross or merchant marine, and before September, 1937.
- 75-6219. Establishment of a tax-deferred annuity program.

75-6201. Definitions. As used in this title, unless the context clearly indicates otherwise:

- (1) * * * [Same as parent volume.]
- (2) "Retirement board" means the retirement system's governing board provided by section 82A-212.
- (3) to (19) * * * [Same as parent volume.]

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "section 82A-212" in subdivision (3) for "section 75-6203."

75-6202. Retirement system. The state teachers' retirement system created under the provisions of chapter 87, Laws of 1937 is hereby recognized as the state teachers' retirement system of the state of Montana and no provisions of this act shall affect or impair the validity of any action taken by its governing board or the rights of any person arising under the provisions of chapter 87, Laws of 1937 or any subsequent amendment thereto.

Such state teachers' retirement system shall be known as "The Teachers' Retirement System of the State of Montana" and in that name shall transact all business of the retirement system, hold its assets in trust, and have such powers and privileges of a corporation that may be necessary to carry into effect the provisions of this title.

History: En. 75-6202 by Sec. 97, Ch. 5, L. 1971; amd. Sec. 22, Ch. 326, L. 1974.

Amendments

The 1974 amendment deleted "invest its funds" before "hold its assets" near the end of this section.

75-6203. Repealed.

Repeal

Section 75-6203 (Sec. 98, Ch. 5, L. 1971; Sec. 30, Ch. 100, L. 1973), relating to the

teachers' retirement board, was repealed by Sec. 103, Ch. 326, Laws of 1974. For new law, see sec. 82A-212.

75-6204. Per diem and expenses. The members of the retirement board shall serve without direct or indirect compensation except that each appointed member shall receive twenty-five dollars (\$25) per day and his necessary and actual expenses incurred for each day in attendance at the meetings of such board or in the execution of his duties as a member of the retirement board. All per diem and expenses paid under the provisions of this section shall be paid from the expense fund of the retirement system.

History: En. 75-6204 by Sec. 99, Ch. 5, L. 1971; amd. Sec. 1, Ch. 507, L. 1973.

diem rate specified in the first sentence from \$20.00 to \$25.00; and deleted a second sentence limiting each member's per diem to \$300 per fiscal year.

Amendments

The 1973 amendment increased the per

75-6206. Financial administration of moneys. The retirement board shall be the trustees of all moneys collected for the retirement system and as such trustees they shall provide for the financial administration of the moneys in the following manner:

(1) The moneys shall be invested and re-invested by the state board of investments.

(2) The retirement board annually shall establish the rate of regular interest.

(3) * * * [Same as parent volume.]

(4) The state treasurer is the custodian of the collected retirement system moneys and of the securities in which said moneys are invested. All expenditures from such moneys shall be made only upon claims signed by two (2) persons designated by the retirement board. A properly attested copy of a resolution of the retirement board designating such persons and bearing on its face specimen signatures of each person shall be filed with the department of administration as its authority for approving such claims.

(5) to (7) * * * [Same as parent volume.]

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974.

of investments" for "board of land commissioners" at the end of subdivision (1); and deleted "on the basis of the interest earnings of the retirement system for the preceding year and of the probable earnings to be made, in the judgment of the

Amendments

The 1973 amendment substituted "board

board, during the immediate future" from the end of subdivision (2).

The 1974 amendment substituted "department of administration" in subdivision (4) for "state controller."

75-6207. Method of financing. The retirement board shall establish and maintain the following funds in which all of the assets of the retirement system shall be credited according to the purpose for which the assets are held.

(1). * * * [Same as parent volume.]

(a) Each employer shall deduct from the compensation of each active member on each and every payroll of such member for each and every payroll period subsequent to the date on which such member became a member an amount equal to five and one-eighth per cent ($5\frac{1}{8}\%$) of such member's earnable compensation, but no employer shall make any deductions for annuity purposes from the compensation of a member who has attained the age of sixty (60) and rendered thirty-five (35) years of creditable service if such member elects not to contribute.

(b) to (d). * * * [Same as parent volume.]

(2) and (3). * * * [Same as parent volume.]

(a) Each employer shall pay into the pension accumulation fund an amount equal to five and one-fourth per cent ($5\frac{1}{4}\%$) of the earnable compensation of each member employed during the whole or part of the preceding payroll period.

(b) to (d). * * * [Same as parent volume.]

(e) All interest and other earnings realized on the moneys of the retirement system shall be credited to the pension accumulation fund and the amounts required to allow regular interest on the annuity savings fund, and the annuity reserve fund shall be transferred to the respective funds from the pension accumulation fund.

(f) All pensions and benefits in lieu thereof, including pensions payable under section 75-6218, shall be paid from the pension accumulation fund.

(g) The retirement board may in its discretion transfer to and from the pension accumulation fund the amount of any surplus or deficit which may develop in the reserve creditable to the annuity reserve fund, as shown by actuarial valuation, and also such expenses as hereinafter provided.

(4) Expense fund. The expense fund shall be the fund to which shall be credited all moneys for the administrative expenses of the retirement system and from which the expenses of administration of the retirement system shall be paid exclusive of amounts payable as retirement allowances or other benefits. The retirement board shall determine annually the amount required for the expense fund to defray the administrative expense in the ensuing fiscal year and shall credit such an amount to the expense fund from interest and other earnings realized on the moneys of the retirement system.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973.

Amendments

The 1973 amendment increased the contribution rate specified in subdivision (1) (a) from 5% to $5\frac{1}{8}\%$; increased the contribution rate specified in subdivision

(3)(a) from $5\frac{1}{8}\%$ to $5\frac{1}{4}\%$; deleted references to the pension reserve fund following references to the annuity reserve fund in subdivisions (3)(e) and (3)(g); deleted "with the exception of those payable to members not entitled to prior service credit" after the reference to section 75-6218 in subdivision (3)(f); deleted subdivision (3)(h), providing for

transfer on retirement of a member without a prior service certificate; deleted a subsection (4), relating to a pension reserve fund, for text of which see parent volume; renumbered subsection (5) as (4); deleted a subdivision (5)(a) requiring an annual payment of \$1.00 per member for the expense fund; and made minor changes in style and phraseology.

75-6208. Benefits. The retirement, disability and other benefits of the retirement system shall be granted on the basis of the following provisions:

(1). * * * [Same as parent volume.]

(a) Any member who has completed five (5) years of creditable service, the last five (5) years of which shall have been in this state, and who has attained the age of sixty (60), or who has completed thirty-five (35) years of creditable service, may retire from service, if he files with the retirement board his written application setting forth the fact of his retirement.

(b) and (c). * * * [Same as parent volume.]

(2) Allowance for superannuation retirement. Upon superannuation retirement a member shall receive a retirement allowance which shall consist of:

(a) A pension which, together with an annuity, shall provide a retirement allowance equal to one-half ($\frac{1}{2}$) of his average final compensation provided his creditable service is at least thirty-five (35) years, otherwise a pension together with his annuity of one-seventieth ($\frac{1}{70}$) of his average final compensation multiplied by the number of years of creditable service.

(b) The minimum annual retirement allowance for a member who has completed thirty-five (35) years of service shall be twenty-four hundred dollars (\$2,400) and the minimum retirement allowance for a member whose service is less than thirty-five (35) years shall be based on the proportionate amount of twenty-four hundred dollars (\$2,400) that his service bears to thirty-five (35) years of service.

(c) Every beneficiary receiving a retirement allowance on July 1, 1971 shall be entitled to an increase in his monthly retirement allowance of one dollar (\$1) for each year of creditable service at the time of retirement up to a maximum of thirty-five dollars (\$35), or an increase in his retirement allowance of ten per cent (10%), whichever is larger, beginning July 1, 1973.

(d) Every beneficiary receiving a retirement allowance shall be entitled to an increase in his monthly retirement allowance on July 1, 1973 of one-fourth of one per cent (.25%) multiplied by the number of months he has been retired since July 1, 1971, but if he is eligible under subsections (2)(a), (2)(b) or (2)(c) above, and the benefit thereunder is larger than the increased retirement allowance prescribed herein, this provision shall not apply.

(e) On July 1, 1974 and on July 1, 1975, every beneficiary receiving a retirement allowance shall be entitled to an increase in his monthly retirement allowance of one-fourth of one per cent (.25%) multiplied by the number of months he has been retired during the preceding fiscal year.

(f) Any member who has completed five (5) years of creditable service, the last five years of which shall have been in this state, and who has attained the age of fifty-five (55) may retire from service and be eligible to an early retirement allowance if he files with the retirement board his written application setting forth the fact of his retirement. The early retirement allowance shall be determined as prescribed in subsections (a) through (f) above, with the further provision that such allowance will be reduced by one half of one per cent (.5%) multiplied by the number of months which the retirement date precedes the date on which he would have retired had he attained sixty (60) years of age or had he completed thirty-five (35) years of creditable service.

(g) In the event of death of a member after retirement, a death benefit of five hundred dollars (\$500) will be payable to his designated beneficiary.

(h) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total retirement allowance paid and the amount of the accumulated contributions shall be paid to the beneficiary.

(3). * * * [Same as parent volume.]

(a) to (e). * * * [Same as parent volume.]

(4). * * * [Same as parent volume.]

(a). * * * [Same as parent volume.]

(b) A pension which together with his annuity, shall provide a total retirement allowance equal to one-seventieth ($1/70$) of his average final compensation multiplied by the number of years of his creditable service, if such retirement allowance exceeds one-quarter ($1/4$) of his average final compensation; otherwise, a pension which, together with his annuity, shall provide a total retirement allowance equal to one-quarter ($1/4$) of his average final compensation, provided, however, that no such allowance shall exceed one-seventieth ($1/70$) of his average final compensation multiplied by the number of years which would be creditable to him were his service to continue until the attainment of the minimum age for superannuation retirement.

(c). * * * [Same as parent volume.]

(5) Withdrawal of accumulated contributions. Any inactive member electing to do so or any person whose membership terminates may withdraw his accumulated contributions to his annuity account in the retirement system in accordance with the following provisions:

(a). * * * [Same as parent volume.]

(b) Upon recovery from a disabling illness or separation from the armed forces, any person qualifying as an inactive member under the provisions of subsection (2) of section 75-6210 may withdraw his accumulated contributions unless he returns to active membership.

(c) Any person whose membership terminates under the provisions of subsection (4) of section 75-6211 may withdraw his accumulated contributions.

(6). * * * [Same as parent volume.]

(a). * * * [Same as parent volume.]

(b) In lieu of benefits provided in (a) above, if the deceased member had qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. The monthly life annuity shall be determined as prescribed in subsections (2)(a) through (2)(h) assuming the member had elected option A as prescribed in subsection (7)(a) below. In addition, if the deceased member had five (5) or more years of creditable service and was an active member in the state of Montana within one (1) year prior to his death, a lump sum death benefit of \$500 will be payable to his designated beneficiary.

(c). * * * [Same as parent volume.]

(7) Optional allowances. With the provision that no optional selection shall be effective in case a beneficiary dies within thirty (30) days after retirement, and that such a beneficiary shall be considered as an active member at the time of his death; until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement or disability allowance payable throughout life as hereinabove provided. This benefit shall be referred to as the normal form of retirement allowance. In lieu of normal form of retirement allowance, the member may elect an optional allowance which would be the actuarial equivalent at the time of his retirement or disability allowance and would provide an allowance payable throughout his lifetime and upon his death continue to such person as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement with the provision that:

(a) Option A. The optional allowance will continue to the member during his lifetime and upon his death, continue throughout the lifetime of his designated beneficiary; or

(b) Option B. The optional allowance will continue throughout his lifetime and upon his death, one-half ($\frac{1}{2}$) of his optional allowance will be continued throughout the lifetime of his designated beneficiary; or

(c) Option C. The optional benefit will continue throughout his lifetime and upon his death, two-thirds ($\frac{2}{3}$) of the optional allowance shall be continued throughout the lifetime of his designated beneficiary; or

(d) Option D. The optional allowance shall continue while both the member and his designated beneficiary are living and upon the death of either, one-half ($\frac{1}{2}$) of the optional allowance shall be continued throughout the lifetime of the survivor; or

(e) Option E. The optional allowance will be payable while both the member and his designated beneficiary are living and upon the death of either, two-thirds ($\frac{2}{3}$) of the optional allowance shall be continued throughout the lifetime of the survivor; or

(f) Option F. Some other benefit or benefits shall be paid either to the member or his surviving designated beneficiary. The provisions of this retirement allowance shall be approved by the retirement board.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973.

Amendments

The 1973 amendment inserted "or who has completed thirty-five (35) years of creditable service" in subdivision (1)(a);

completely rewrote the lettered subdivisions in subsection (2); deleted "ninety per cent (90%) of" before "one-seventieth" in two places in subdivision (4) (b); substituted "may withdraw" for "shall withdraw" in the preliminary paragraph of subsection (5) and in subdivisions (5) (b) and (5) (c); deleted a para-

graph following subdivision (5) (c); completely rewrote the second sentence and added the third sentence of subdivision (6) (b); and completely rewrote that portion of subsection (7) following the first sentence. For prior provisions, see parent volume.

75-6212. Membership application and creditable service. Whenever a person becomes eligible for membership in the retirement system, he shall apply for such membership on the application form prescribed by the retirement board. The creditable service of a member shall begin on the receipt of the membership application by the retirement board and shall accumulate to the member's credit on the basis of the retirement board's policy governing creditable service.

The creditable service of any member shall include the following:

(1) and (2). * * * [Same as parent volume.]

(3) any service awarded by a prior service certificate issued under the provisions of chapter 87, Laws of 1937, chapter 215, Laws of 1939 and their subsequent amendments, or under the provisions of section 75-6213; plus

(4) the creditable service established by the retirement board under the provisions of this section shall be final and conclusive for the purposes of the retirement system unless, at any time, the retirement board discovers an error or fraud in the establishment of the creditable service, in which case the retirement board shall re-establish the creditable service; plus

(5) any service awarded for employment while on leave under section 75-6213.

History: En. 75-6212 by Sec. 107, Ch. 5, L. 1971; amd. Sec. 5, Ch. 507, L. 1973.

Amendments

The 1973 amendment designated the former final paragraph as paragraph (4); and added paragraph (5).

75-6213. Creditable service for out-of-state employment, employment while on leave, for active service in the armed forces of the United States and the American red cross or merchant marine, and before September, 1937. Any person applying for membership also may apply for creditable service in the retirement system for out-of-state employment service that would have been acceptable under the provisions of this title if such service were performed in the state of Montana. The person shall be awarded creditable service, conditional upon his completing five (5) years of active membership in Montana, for the number of years the retirement board determines to be creditable service but for not more than five (5) years, if he contributes to the retirement system an amount equal to five per cent (5%) of his first full year's teaching salary earned in Montana after his out-of-state service for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of five (5) years of membership service in Montana. The contributions may be a lump-sum payment or in installments as agreed between the person and the retirement board; and

(1) Any person applying for membership also may apply for creditable service in the retirement system for employment while on leave. The person shall be awarded creditable service, conditional upon his having been a member prior to his leave and upon completing five (5) years of active membership in Montana subsequent to his return, provided his employment while on leave enhanced his teaching experience as determined by the board. The person shall be awarded creditable service as determined by the board but for not more than two (2) years, if he contributes to the retirement system an amount equal to ten and three-eighths per cent ($10 \frac{3}{8}\%$) of his first full year's teaching salary earned in Montana after his return from leave for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of five (5) years of membership service in Montana. The contribution may be a lump-sum payment or in installments as agreed between the person and the retirement board; and

(2) Any person applying for membership also may apply for creditable service in the retirement system for active service in the armed forces of the United States which includes the army, navy, marine corps, air force and coast guard or in the American red cross or merchant marine. The person shall be awarded creditable service, conditional upon his completing five (5) years of active membership in Montana, for the number of years the retirement board determines to be creditable service but for not more than two (2) years, if he contributes to the retirement system an amount equal to ten and three-eighths per cent ($10 \frac{3}{8}\%$) of his first full year's teaching salary earned in Montana following the active service in the armed forces of the United States or in the American red cross or merchant marine plus interest at the rate the contribution would have earned had the contribution been in his account upon completion of five (5) years of membership service in Montana. The contribution may be a lump-sum payment or in installments as agreed between the person and the retirement board; however

(3) In no event will the total creditable service for out-of-state teaching, employment while on leave, or while on active service in the armed forces of the United States or the American red cross or merchant marine exceed five (5) years.

Whenever a member is retiring with at least five (5) years of creditable service and he has been an active member for at least five (5) consecutive school fiscal years, he may request creditable service for any employment service he rendered prior to the first day of September, nineteen hundred and thirty-seven (1937) for which he has not received a prior service certificate. In order to receive such creditable service, he shall apply for it and provide certification of such service. The retirement board shall determine the amount of creditable service to be awarded, if any, and issue a prior service certificate.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973.

Amendments

The 1973 amendment substituted "his first full year's teaching salary earned in Montana after his out-of-state service"

in the latter part of the second sentence of the first paragraph for "his first year's salary earned in Montana"; inserted numbered paragraphs (1) to (3); and reduced the creditable service requirement stated at the beginning of the final paragraph from ten to five years.

75-6219. Establishment of a tax-deferred annuity program. The retirement board shall establish a tax-deferred annuity program for teachers which shall conform with the provisions of section 403 (b) of the Internal Revenue Code. Contributions by members participating in the tax-deferred annuity program shall be maintained in individual accounts established for this purpose.

History: En. 75-6219 by Sec. 7, Ch. 507, L. 1973.

Title of Act

An act to amend section 75-6204, R. C. M. 1947, to increase pay to members of the teachers' retirement board and remove restrictions on maximum per diem pay; amending sections 75-6206 and 75-6207, R. C. M. 1947, to change certain methods of funding and disbursing from the various teachers' retirement system funds; amending section 75-6208, R. C. M. 1947, to provide additions and changes in various

benefits to members of the teachers' retirement system; amending section 75-6212, R. C. M. 1947, to allow for service credits for employment while a teacher is on leave; amending section 75-6213, R. C. M. 1947, to define basis of cost for out-of-state service credit; changing credit for out-of-state teaching and prior military service and decreasing membership requirements of the teachers' retirement system; adding a new section to be numbered 75-6219 providing for a tax deferred annuity program sponsored by the teachers' retirement system.

CHAPTER 63—COMPULSORY ATTENDANCE AND TUITION AGREEMENTS

Section

- 75-6303. Compulsory enrollment and excuses.
- 75-6316. High school tuition.
- 75-6317. Reporting, budgeting and payment for high school tuition.
- 75-6323. Extracurricular fund for pupil functions.

75-6303. Compulsory enrollment and excuses. Any parent, guardian or other person who is responsible for the care of any child who is seven (7) years of age or older prior to the first day of school in any school fiscal year and has not yet reached his sixteenth birthday and who has not completed the work of the eighth (8th) grade, shall cause the child to be instructed in the English language and in the subjects prescribed by section 75-7503 or section 75-7504, whichever is applicable. Such parent, guardian or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when he establishes residence in the district unless:

(1) to (5). * * * [Same as parent volume.]

History: En. 75-6303 by Sec. 116, Ch. 5, L. 1971; amd. Sec. 1, Ch. 389, L. 1971; amd. Sec. 3, Ch. 91, L. 1973.

Amendments

The 1973 amendment substituted "and" for "or" after "sixteenth birthday" in the first sentence.

75-6310. Duties and sanctions.

Equal Protection

Enforcement of a local school district rule prohibiting married students from engaging in extracurricular high school activities, including varsity football, was

enjoined on the ground that the regulation constituted a denial of equal protection by discriminating against married persons without a rational basis. *Moran v. School Dist. No. 7*, 350 F Supp 1180.

75-6316. High school tuition. Any child may be enrolled in and attend a high school outside of the county in which he resides when such high school is located in any county of the state of Montana or in a

county of another state that is adjacent to the state of Montana. When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before the first day of July of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. Such application shall be made on a tuition agreement form supplied by the county superintendent and shall be approved by the trustees of the district where the child wishes to attend school and the county superintendent of the child's county of residence before permission to enroll in and attend a school outside of the county under the provisions of this section shall be granted.

The county superintendent shall approve a tuition application when a child lives closer to a high school of another county than any high school located within his resident county or, when due to road or geographic conditions, it is impractical to attend a high school in his resident county. In approving such a tuition application the county superintendent is not required to approve a tuition application for a student seeking to attend a high school outside the state of Montana if the resident district provides transportation. In approving a tuition agreement under this provision, the county superintendent may require the child to attend the high school closest to his residence. The county superintendent may approve any other tuition application that satisfies the geographic requirements of this section.

The trustees of the district where the child wishes to attend school shall approve or disapprove any tuition application submitted to them under the provisions of this section within fifteen (15) days after the receipt of the application.

The county superintendent shall notify the parent or guardian, and the trustees of the district where the child wishes to attend school of the tuition agreement approval or disapproval. If a tuition agreement is disapproved by the county superintendent, the parent may appeal such disapproval to the county superintendent for his reconsideration and, subsequently, to the superintendent of public instruction under the provision for the appeal of controversies in this title. The approval of any tuition agreement by the approval agents or upon appeal shall authorize the child named in such agreement to enroll in and attend the school named in such agreement for the ensuing school fiscal year.

History: En. 75-6316 by Sec. 129, Ch. 5, L. 1971; amd. Sec. 1, Ch. 211, L. 1974.

Effective Date

Section 2 of Ch. 211, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 14, 1974.

Amendments

The 1974 amendment inserted the second sentence in the second paragraph.

75-6317. Reporting, budgeting and payment for high school tuition. At the close of the school term of each school fiscal year, the trustees of each high school district shall determine the rate of tuition for the current school fiscal year by:

(1) totaling the actual expenditures from the district general fund, retirement fund and debt service fund;

(2) dividing the amount determined in subsection (1) above by the ANB of the district for the current fiscal year, as determined under the provisions of section 75-6902; and

(3) subtracting the total of the per ANB amount allowed by section 75-6905 that represents the foundation program as prescribed by section 75-6906 plus the per ANB amount determined by dividing the state financing of the district permissive levy by the ANB of the district, from the amount determined in subsection (2) above.

Before July 15, the trustees shall report to the county superintendent of the county in which the district is located:

(a) the names, addresses, and resident counties of the pupils attending the schools of the district under an approved tuition agreement;

(b) the number of days of school attended by each pupil;

(c) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, shall have the authority to waive; and

(d) the rate of current school fiscal year tuition, as determined under the provisions of this section. When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the county superintendent of each county in which the reported pupils reside.

When the county superintendent of any county receives a tuition report or reports for high school pupils residing in his county and attending an out-of-county high school under approved tuition agreements, he shall determine the total amount of tuition due such out-of-county high schools on the basis of the following per pupil schedule: the rate of tuition, number of pupils attending under an approved tuition agreement and other information provided by each high school district where resident county pupils have attended school.

The total amount of the high school tuition with consideration of any tuition waivers, shall be financed by the county basic special tax for high schools as provided in section 75-6914.

In December, the county superintendent shall cause the payment by county warrant of the high school tuition obligations established under this section out of the first moneys realized from the county basic special tax for high schools. The payment shall be made to the county treasurer of the county where each high school entitled to tuition is located. The county treasurer shall credit such tuition receipts to the general fund of the applicable high school district, and the tuition receipts shall be used in accordance with the provisions of section 75-6926.

History: En. 75-6317 by Sec. 130, Ch. 5, L. 1971; amd. Sec. 1, Ch. 251, L. 1974.

Amendments

The 1974 amendment rewrote this sec-

tion to repeal the high school tuition schedule and to establish the annual calculation of the district's tuition rate on the basis of actual expenditures.

75-6323. Extracurricular fund for pupil functions. The government of the pupils of the school within a district or the administration of a school on behalf of the pupils may establish an extracurricular fund for the purposes of the receipts and expenditures of money collected for pupil extracurricular functions with the approval of the trustees of the district.

All extracurricular moneys of any pupil organization of the school shall be deposited and expended by check from a bank account maintained for the extracurricular fund.

An accounting system for the extracurricular fund recommended by the state examiner shall be implemented by the trustees. Such accounting system shall provide for:

(1) and (2). * * * [Same as parent volume.]

The trustees of the district shall cause an annual audit of the extracurricular fund by retaining the state examiner to perform such audit. A fee of eighty dollars (\$80) per day per man shall be paid from the extracurricular fund or district moneys to the state examiner for deposit in the state treasury to the credit of the general fund.

The auditor shall file a certified copy of the audit report with the county superintendent. The county superintendent shall publish notice in a newspaper of the district or county of the filing and the fact that it is open to public inspection.

History: En. 75-6323 by Sec. 136, Ch. 5, L. 1971; amd. Sec. 1, Ch. 349, L. 1971; amd. Sec. 1, Ch. 218, L. 1973.

ing" in the first sentence of the third paragraph; deleted the second sentence of the third paragraph; and deleted "If the state examiner performs the audit," from the beginning of the present second sentence of the third paragraph.

Amendments

The 1973 amendment deleted "a qualified accountant or" following "by retain-

CHAPTER 64—SCHOOL ELECTIONS

Section

75-6404. Regular school election day and special school elections.

75-6410. Qualifications of elector.

75-6412. Elector challenges.

75-6404. Regular school election day and special school elections. The first Tuesday of April of each year shall be the regular school election day. Unless otherwise provided by law, special school elections may be conducted at such times as determined by the trustees.

History: En. 75-6404 by Sec. 140, Ch. 5, L. 1971; amd. Sec. 1, Ch. 109, L. 1974.

first Tuesday of April" for "The first Saturday of April."

Amendments

The 1974 amendment substituted "The

Effective Date

Section 3 of Ch. 109, Laws 1974 read "This act shall become effective on January 1, 1975."

75-6406. Conditions under which school election called.

Cross-References

Board of public education to exercise

powers and duties of board of education, sec. 75-5617 (1).

75-6410. Qualifications of elector. Every person is entitled to vote at school elections if he has the following qualifications:

(1) He has registered to vote with the county registrar as a resident in the school district in which he resides and proposes to vote in the manner provided by the general state election laws except in regard to the closure of elector registration as provided in section 75-6413;

- (2) He is eighteen (18) years of age or older ;
 (3) He has been a resident of Montana for at least thirty (30) days;
 and
 (4). * * * [Same as parent volume.]

No person convicted of a felony has the right to vote while he is serving a sentence in a penal institution.

No person adjudicated to be of unsound mind has the right to vote unless he has been restored to capacity as provided by law.

History: En. 75-6410 by Sec. 146, Ch. 5, L. 1971; amd. Sec. 2, Ch. 83, L. 1971; amd. Sec. 1, Ch. 118, L. 1971; amd. Sec. 4, Ch. 91, L. 1973; amd. Sec. 31, Ch. 100, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 91, and once by Ch. 100. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 91, Laws of 1973, deleted "Except as provided in section 75-6411" from

the beginning of the section; and inserted "as a resident in the school district in which he resides and proposes to vote" in subdivision (1).

Chapter 100, Laws of 1973, substituted new subdivisions (2) and (3) for subdivisions reading "(2) He shall be of a minimum age for voting provided by the constitution of the state of Montana; (3) He has met the residency requirement for voting as provided by the constitution of the state of Montana"; substituted "while he is serving a sentence in a penal institution" at the end of the next to last paragraph for "unless he has been pardoned"; and substituted "to be of unsound mind" in the final paragraph for "insane."

75-6410.1. Repealed.

Repeal

Section 75-6410.1 (Sec. 1, Ch. 83, L. 1971), relating to qualifications of voters on school tax questions, was repealed by

Sec. 58, Ch. 100, Laws 1973. Chapter 391, Laws of 1973, purported to amend this section, but such amendment was void under the rule in section 43-515.

75-6412. Elector challenges. An elector may challenge the qualifications of another elector under the provisions of section 23-3015. Any person offering to vote in a school election may be challenged by any elector of the district on any of the grounds for challenge established in section 23-3611, R.C.M., 1947. Such challenge shall be determined in the same manner, using the same oath as provided in chapter 36 of Title 23, R.C.M., 1947.

Any person who shall have been challenged under any of the provisions of this section and who shall swear or affirm falsely before any school election judge shall be guilty of perjury and shall be punished accordingly.

History: En. 75-6412 by Sec. 148, Ch. 5, L. 1971; amd. Sec. 3, Ch. 83, L. 1971; amd. Sec. 5, Ch. 91, L. 1973.

Amendments

The 1973 amendment inserted a new first sentence at the beginning of the section.

CHAPTER 65—SCHOOL DISTRICT ORGANIZATION AND REORGANIZATION

Section

- 75-6503. District classification.
 75-6508. Elementary district annexation.
 75-6509. Consolidation or annexation election with assumption of bonded indebtedness.
 75-6516.1. Boundary adjustments in elementary school districts.
 75-6516.2. Review of boundaries by county superintendent.

- 75-6517. Limitations for creation of new elementary district.
 75-6532. Cash disposition when district ceases to exist.
 75-6534. Cash disposition when new elementary district created.

75-6503. District classification. Each elementary district shall have a classification of:

(1) and (2). * * * [Same as parent volume.]

(3) third class, if it has a population of less than one thousand (1,000). The population of an elementary district shall be determined by the county superintendent on the basis of the best available population information for the district.

The county superintendent shall establish the classification of each elementary district in the county on the basis of the population determined for the district and the district classification criteria prescribed in this section. Whenever the population of an elementary district increases or decreases requiring an adjustment of the district classification according to the criteria prescribed in this section, the county superintendent shall declare such district's classification to be changed in accordance with the determined population, except that the classification of an elementary district shall not be changed more than once every five (5) years.

Whenever the county superintendent changes an elementary district's classification with the result that a larger number of trustees is required on the elementary board of trustees, the increased number of trustee positions shall be filled in the manner provided for filling trustee vacancies. Such positions shall be subject to election on the next regular school election day. If the county superintendent changes an elementary district's classification with the result that a lesser number of trustees is required, the next elementary trustee positions that become vacant under any circumstances shall not be filled until the number of elementary trustee positions has been reduced to the number required by law.

The classification of a high school district shall be the same as the classification of the elementary district where the high school building is located. Whenever the classification of such elementary district is changed, the classification of a high school district shall be changed accordingly, and the county superintendent shall adjust the number of additional high school district trustee positions in accordance with the method prescribed in section 75-5905 for the determination of the number of additional trustee positions required for a high school district. An increased number of trustee positions shall be filled by the appointment of the county superintendent and such positions shall be subject to election at the next regular trustee election. When the number of positions is decreased, the next additional high school trustee positions that become vacant under any circumstances shall not be filled until the number of trustee positions has been reduced to the number required by law.

History: En. 75-6503 by Sec. 162, Ch. 5, L. 1971; amd. Sec. 1, Ch. 353, L. 1971; amd. Sec. 3, Ch. 137, L. 1973.

Amendments

The 1973 amendment deleted "or; if the county superintendent deems it more equitable, he shall multiply by three (3)

the approved number of school census children from the last completed census report of the district who are six (6) years of age or older but who have not reached their twenty-first (21) birthday" from the end of the sentence following clause (3).

75-6508. Elementary district annexation. An elementary district may be annexed to another elementary district located in the same county when one of the conditions of section 75-6507 is met in accordance with the following procedure:

(1) to (6). * * * [Same as parent volume.]

History: En. 75-6508 by Sec. 167, Ch. 5, of the conditions of section 75-6507 is met" in the latter part of the preliminary clause.
L. 1971; amd. Sec. 6, Ch. 91, L. 1973.

Amendments

The 1973 amendment inserted "when one

75-6509. Consolidation or annexation election with assumption of bonded indebtedness. (1) to (3) * * * [Same as parent volume.]

(4) When the trustees in each elementary district conducting an election canvass the vote under the provisions of section 75-6423, they shall decide according to the following procedure, if the proposition has been approved:

(a) * * * [Same as parent volume.]

(b) When the proposition is approved under subsection (4)(a), determine the number of votes "FOR" and "AGAINST" the proposition. The proposition shall be approved in the district if a majority of those voting approve the proposition. If the proposition is disapproved under either the provisions of subsection (4)(a) or (4)(b), the proposition shall be disapproved in the district.

History: En. 75-6509 by Sec. 168, Ch. 5, L. 1971; amd. Sec. 5, Ch. 83, L. 1971; amd. Sec. 1, Ch. 155, L. 1974. section (4)(a)" and "subsection (4)(a) or (4)(b)" for "subsection (3)(a)" and "subsection (3)(a) or (3)(b)" in subdivision (4)(b).

Amendments

The 1974 amendment substituted "sub-

75-6516.1. Boundary adjustments in elementary school districts. The trustees of an elementary school district may, by resolution, request a change in the boundaries between their district and an adjacent district. The resolution shall be addressed to the county superintendent of schools, who, upon receiving such a resolution, shall proceed as set forth in section 75-6516.

History: En. Sec. 1, Ch. 29, L. 1974. district trustees to petition for, and county superintendents to change district boundaries.

Title of Act

An act authorizing elementary school

75-6516.2. Review of boundaries by county superintendent. A county superintendent of schools shall, at least once every three (3) years, review the existing elementary school district boundaries in the county. This review and any recommended boundary changes shall be presented by the superintendent at a hearing conducted under section 75-6516. If the superintendent orders a boundary change after the hearing, he shall forward copies of his review and the testimony at the hearing to the board of county commissioners and the state superintendent of public instruction.

History: En. Sec. 2, Ch. 29, L. 1974.

75-6517. Limitations for creation of new elementary district. A new elementary district may be created out of the territory of an existing elementary district or districts when:

(1) and (2). * * * [Same as parent volume.]

(3) the ANB in any of the existing districts is not reduced to less than fifteen (15).

History: En. 75-6517 by Sec. 176, Ch. 5, L. 1971; amd. Sec. 4, Ch. 137, L. 1973.

ANB" at the beginning of subdivision (3) for "the number of school census children between the ages of six (6) and sixteen (16) years according to the last complete district census reports."

Amendments

The 1973 amendment substituted "the

75-6532. Cash disposition when district ceases to exist. Whenever a district shall cease to exist in any manner prescribed in this title except when districts are consolidated, the cash on hand to the credit of the funds of the district and the debts of such district shall be allocated in the following manner:

(1) and (2). * * * [Same as parent volume.]

When the territory is assumed by more than one (1) district, the remaining cash shall be prorated between the districts on the basis of the number of children attending school and residing within the territory assumed by each district as determined by the county superintendent.

(3). * * * [Same as parent volume.]

History: En. 75-6532 by Sec. 191, Ch. 5, L. 1971; amd. Sec. 5, Ch. 137, L. 1973.

dren attending school and residing" for "census children residing" in the latter part of the second paragraph of subdivision (2).

Amendments

The 1973 amendment substituted "chil-

75-6534. Cash disposition when new elementary district created. Whenever a new district is created, under the provisions of section 75-6518, the end-of-the-year cash balance in each fund of each district having territory that has been placed in the new district, except the debt service fund, shall be apportioned by the county superintendent on the basis of the proportion that the number of school children residing in the new district is of the total number of school children residing in the old district before the creation of the new district. After the new district has operated a school for one (1) month, the county superintendent shall order the county treasurer to transfer the cash to which the new district is entitled to the credit of the fund of the new district which corresponds with the fund from which it was transferred. The new district shall not assume any debts of the old district other than existing bonded indebtedness which remains an obligation against the taxable property of the territory included in the new district.

History: En. 75-6534 by Sec. 193, Ch. 5, L. 1971; amd. Sec. 6, Ch. 137, L. 1973.

children" for "school census children" in two places near the end of the first sentence.

Amendments

The 1973 amendment substituted "school

CHAPTER 66—OPENING AND CLOSING OF SCHOOLS

Section

75-6601. Definition of various schools.

75-6608. School isolation.

75-6609. Opening of a middle school.

75-6601. Definition of various schools. As used in this title, unless the context clearly indicates otherwise, the term "school" means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public expense.

The trustees of any district shall designate the grade assignments for the schools of the district but for the purposes of this title each school shall be known as:

(1) an elementary school when it comprises the work of any combination of kindergarten, other preschool programs or the first eight (8) grades, or their equivalents. A middle school is a school comprising the work of grades four (4) through eight (8) or any combination thereof that has been accredited as a middle school under the provisions of section 75-7502. When an accredited junior high school or an accredited six-year high school is operated by the district, grades seven (7) and eight (8), or their equivalents, shall not be considered as elementary grades.

(2) a high school when it comprises the work of one (1) or more grades of school work, or their equivalents, intermediate between the elementary schools and the institutions of higher education of the state of Montana. Types of high schools shall be designated as follows:

(a) to (d) * * * [Same as parent volume.]

(e) a county high school is a four-year high school operated as an agency of county government and established under the provisions of the acts of March 3, 1899, March 14, 1901 and any subsequent amendments thereto;

(f) * * * [Same as parent volume.]

(3) unless otherwise required by law, the trustees of an elementary district in which a high school is located and the trustees of the high school district operating such high school may organize the schools of their districts to form a kindergarten through grade twelve (12) school system, provided that the high school and elementary trustees shall not assume responsibility for the administration of grades which are not properly within their jurisdiction.

History: En. 75-6601 by Sec. 199, Ch. 5, L. 1971; amd. Sec. 1, Ch. 352, L. 1974.

Amendments

The 1974 amendment inserted the definition of "middle school" in subdivision (1);

deleted the word "or" at the end of clause (e) of subdivision (2); inserted the numerical designation (3) at the beginning of the last paragraph and made minor changes in punctuation.

75-6608. School isolation. The trustees of any district operating an elementary school of less than ten (10) ANB or a high school of less than twenty-five (25) ANB shall annually apply to have the school classified as an isolated school. The application shall be submitted by the trustees to the county superintendent by the first day of May each year. Such application shall include:

(1) to (3). * * * [Same as parent volume.]

The county superintendent shall submit the applications to the board of county commissioners (budget board) for their consideration on or before the fifteenth (15th) day of May. The budget board shall approve or disapprove the application on the basis of the criteria established by the superintendent of public instruction. The budget board also may approve an application because of the existence of other conditions which would result in an unusual hardship to the pupils of such school if they were transported to another school.

When an application is approved, the county superintendent shall submit such application to the superintendent of public instruction before the first day of June. The superintendent of public instruction shall approve or disapprove such application for isolated classification by the fourth Monday of June on the basis of the information supplied by the application or objective information the superintendent of public instruction may collect on his own initiative. No elementary or high school shall be considered an isolated school until the approval of the superintendent of public instruction has been received.

History: En. 75-6608 by Sec. 206, Ch. 5, L. 1971; amd. Sec. 1, Ch. 212, L. 1973.

Amendments

The 1973 amendment inserted "annually" in the first sentence of the first paragraph; substituted "May" for "June" at the end of the first sentence of the second paragraph; substituted "criteria established by the superintendent of public instruction" for "existence of unusual obstacles to travel or the unusual distance of the nearest open school having room and facilities for the pupils of such school" in the second sentence of the second paragraph; deleted "because of conditions other than obstacles to travel or the unusual distance to the nearest open school having available room" following

"approved" in the first sentence of the third paragraph; substituted "submit" for "review" following "county superintendent shall" in the first sentence of the third paragraph; deleted "and approve or disapprove it. If the county superintendent approves the isolated classification, he shall send the application indicating his approval and the budget board's approval" in the middle of the second paragraph following "such application"; substituted "first day" for "fourth Monday" at the end of the first sentence of the third paragraph; added the clause following "classification" to the end of the second sentence of the third paragraph; and added the third sentence of the third paragraph.

75-6609. Opening of a middle school. The trustees of any elementary district may open a middle school when such opening has been approved by the superintendent of public instruction. The state superintendent shall investigate an application for the opening of a middle school and shall approve or disapprove the opening before the fourth Monday in June preceding the first year of intended operation. When a middle school opening is approved, the county superintendent shall estimate the ANB after investigating the probable enrollment for the middle school. The ANB so estimated shall be used for budgeting and foundation program purposes during the ensuing school fiscal year.

History: En. 75-6609 by Sec. 2, Ch. 352, L. 1974.

Title of Act

An act authorizing school districts to

operate middle schools as an alternative to junior high schools, and amending sections 75-6601, 75-6902, 75-7502, and 75-7504, R. C. M. 1947.

CHAPTER 67—BUDGET SYSTEM

Section

75-6711. Statement of district, cities' and towns' valuations.

75-6711. Statement of district, cities' and towns' valuations. By the second Monday of July, the department of revenue or its agent in each county shall, at the time of delivering the completed assessment book to the county clerk under the provisions of section 84-505, R.C.M., 1947, also deliver to the county superintendent and to each city or town clerk a statement showing separately for each district and each city or town in his county, the total assessed value and the total taxable value of all property in such districts, cities or towns, as these valuations appear in such completed assessment book.

The county clerk shall, after the second Monday in August and before or at the time of delivering the assessment book to the department of revenue or its agent under the provisions of section 84-4006, R.C.M., 1947, prepare a statement showing separately for each district and each city or town in his county, the total assessed value and the total taxable value of all property in such districts, cities, or towns, as these valuations appear in the assessment book after amendments, corrections, and additions made by the state and county tax appeal boards and entered on the assessment book. The county clerk shall immediately deliver a copy of his statement of assessed and taxable values for districts to the county superintendent and a copy of those portions of such statement for each city and town to the appropriate city or town clerk.

In the case of a joint school district, the department of revenue or its agent and the county clerk shall, at the time of delivering their respective statements to the county superintendent, send a statement of the assessed value and taxable value of the portion of the joint school district situated in their county to the county superintendents and to the county commissioners of each county in which a part of the joint school district is situated.

History: En. 75-6711 by Sec. 217, Ch. 4, L. 1971; amd. Sec. 51, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent in" for "county assessor of" throughout the sec-

tion in order to implement article VIII, section 3 of the 1972 constitution; and substituted "tax appeal board" for "board of equalization" in the second paragraph in order to implement article VIII, section 7 of the 1972 constitution.

CHAPTER 68—FINANCIAL ADMINISTRATION

Section

- 75-6805. Duties of county treasurer.
- 75-6806. Duties of trustees.
- 75-6808. Pecuniary interests, letting contracts and calling for bids, under certain circumstances.
- 75-6808.1. Prohibition on division of contracts to circumvent bid requirement.
- 75-6809. Entering appropriations on accounting records of county treasurer.
- 75-6809.1. Documentation of expenditures.
- 75-6810. Procedure for issuance of warrants.
- 75-6811. Recording and payment of warrants by county treasurer.
- 75-6811.1. Cancellation of outstanding warrants—duplication.
- 75-6812. Transfer among appropriation items of a fund.

75-6805. Duties of county treasurer. The county treasurer of each county shall:

(1) and (2). * * * [Same as parent volume.]

(3) keep a separate accounting of the expenditures for each budgeted fund included on the final budget of each district;

(4) keep a separate accounting of the receipts, expenditures, and cash balances for each budgeted fund included on the final budget of each district and for each nonbudgeted fund established by each district;

(5) to (10). * * * [Same as parent volume.]

History: En. 75-6805 by Sec. 241, Ch. 5, L. 1971; amd. Sec. 5, Ch. 241, L. 1973.

before "accounting" in subdivisions (3) and (4); and substituted "for" for "by budget appropriation item within" before "each budgeted fund" in subdivision (3).

Amendments

The 1973 amendment deleted "detailed"

75-6806. Duties of trustees. The trustees of each district shall have the sole power and authority to transact all fiscal business and execute all contracts in the name of such district. No person, other than the trustees, acting as a governing board, shall have the authority to expend moneys of the district. In conducting the fiscal business of the district, the trustees shall:

(1). * * * [Same as parent volume.]

(2) authorize all expenditures of district moneys, and cause warrants to be issued for the payment of lawful obligations;

(3) and (4). * * * [Same as parent volume.]

(5) report annually to the county superintendent not later than the first day of August, the financial activities of each fund maintained by the district during the last completed school fiscal year on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts shall be submitted to the county superintendent of each county in which part of the joint district is situated;

(6) to (8). * * * [Same as parent volume.]

History: En. 75-6806 by Sec. 242, Ch. 5, L. 1971; amd. Sec. 7, Ch. 137, L. 1973; amd. Sec. 2, Ch. 366, L. 1973.

reading: "Any elementary district that fails to submit the annual report by the time required shall not be entitled to receive any apportionment of the state interest and income moneys and such forfeit in money shall be apportioned to the other elementary districts of the county."

Chapter 366, Laws of 1973, deleted "excepting payments under employee contracts" from the beginning of subdivision (2); deleted "by the written approval of claims for such expenditures" following "district moneys" in subdivision (2); and substituted "lawful obligations" for "approved claims and payments under employee contracts" at the end of subdivision (2).

Compiler's Notes

This section was amended twice in 1973, once by Ch. 137 and once by Ch. 366. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 137, Laws of 1973, deleted from subdivision (5) a final sentence

75-6807. Examination of district accounting records.

Cross-References

State examiner's functions transferred

to department of intergovernmental relations, sec. 82A-903 (3) (a).

75-6808. Pecuniary interests, letting contracts and calling for bids, under certain circumstances. It shall be unlawful for any trustee to (1) have any pecuniary interest, either directly or indirectly, in the erection of any school building, or for warming, ventilating, furnishing, or repairing the same, or (2) be in any manner connected with the furnishing of supplies for the maintenance and operation of the schools, or (3) be employed in any capacity by the school district of which he is trustee.

Whenever the estimated cost of any building, furnishing, repairing or other work for the benefit of the district, or purchasing of supplies for the district, exceeds the sum of four thousand dollars (\$4,000.00), the work done, or the purchase made shall be by contract. Each such contract must be let to the lowest responsible bidder after advertisement for bids. Such advertisement shall be published in the newspaper which will give notice to the largest number of people of the district as determined by the trustees. Such advertisement shall be made once each week for two consecutive weeks and the second publication shall be made not less than five (5) days nor more than twelve (12) days before consideration of bids. Any contract not let pursuant to this section shall be void.

In all cases where bidding is required, the trustees shall award the contract to the lowest responsible bidder except that the trustees shall have the right to reject any or all bids.

With regard to contracting for work or supplies, the board of trustees of a community college district shall be subject to the provisions of section 75-8118.

History: En. 75-6808 by Sec. 244, Ch. 5, L. 1971; amd. Sec. 1, Ch. 42, L. 1971; amd. Sec. 1, Ch. 149, L. 1973.

wrote and consolidated into one paragraph the former second paragraph and numbered paragraphs (1) to (3). For prior version, see parent volume.

Amendments

The 1973 amendment completely re-

75-6808.1. Prohibition on division of contracts to circumvent bid requirement. Whenever any law of this state provides a limitation upon the amount of money that a school district can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a school district shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder which by its nature or character is integral to such public work or construction project, or serves to accomplish one of the basic purposes or functions thereof, into several contracts, separate work orders or by any similar device. This section shall apply not only where the public work or construction project is divided into several projects which are constructed at approximately the same period of time, but also where the public work or construction project is divided into several projects which are constructed in different time periods or over an extended period of time.

History: En. Sec. 2, Ch. 149, L. 1973.

Title of Act

An act to amend section 75-6808, R. C.

M. 1947, to allow all classes of school districts to contract without letting bids for less than four thousand dollars (\$4,000).

75-6809. Entering appropriations on accounting records of county treasurer. When the county treasurer receives the final budgets of the districts from the county superintendent, he shall open a fund for each budgeted fund included on the final budget of each district by entering the amount appropriated for the fund on his accounting record.

Whenever the county treasurer receives a final emergency budget for a district from the county superintendent, he shall increase the amount of the regularly adopted final budget by the amount of the emergency budgeted fund included on the final emergency budget.

History: En. 75-6809 by Sec. 245, Ch. 5, L. 1971; amd. Sec. 1, Ch. 241, L. 1973.

Amendments

The 1973 amendment substituted "the fund" for "each item" near the end of the first paragraph; substituted "increase

the amount" for "increase the item appropriations" in the middle of the second paragraph; and deleted "budget appropriations for each item of each" following "amount of the emergency" near the end of the second paragraph.

75-6809.1. Documentation of expenditures. The expenditure of district moneys, other than employee contract payments, may be authorized by the trustees when:

(1) payee signed claims, wherein the payee attests to the accuracy of the claim and that he has not received the claimed amount, have been issued to the district or

(2) the payee has provided the district with an invoice or other document identifying the quantity and total cost per item included on the invoice.

The intention of this section is to provide sufficient documentation for each expenditure of district moneys.

History: En. Sec. 1, Ch. 366, L. 1973.

Title of Act

An act deleting the requirement that

school districts have signed claims for an expenditure when adequate documentation is provided by the payee; and amending section 75-6806, R. C. M. 1947.

75-6810. Procedure for issuance of warrants. The trustees of each district shall issue all warrants and the warrants shall identify:

(1) to (3). * * * [Same as parent volume.]

Any warrant issued by a district shall be countersigned by the chairman of the trustees and the clerk of the district before the warrant shall be negotiable. Facsimile signatures may be used in accordance with the provisions of chapter 13 of Title 59, R.C.M., 1947, provided that the facsimile signature device shall not be available to the other countersigner of the warrant.

The trustees shall issue warrants in single copy or in triplicate copy. When the warrants are issued in single copy, the trustees shall immediately provide a listing of the issued warrants on a fund-by-fund basis to the county treasurer and retain a copy of the listing in the district accounting records. When the warrants are issued in triplicate, the original copy of the warrant shall be delivered to the payee; the duplicate shall be sent immediately to the county treasurer; and the triplicate shall be retained by the district for accounting record purposes. The duplicate and triplicate copies shall be identified on the face of the warrant as "Not Negotiable—Copy of Original."

However, the trustees may elect to issue warrants in payment of wages and salaries on a direct deposit basis to the employee's account in a local bank, provided the consent of the employee has been obtained and the employee is given an itemized statement of payroll deductions for each pay period.

History: En. 75-6810 by Sec. 246, Ch. 5, L. 1971; amd. Sec. 1, Ch. 341, L. 1971; amd. Sec. 2, Ch. 241, L. 1973.

Amendments

The 1973 amendment deleted "in triplicate" following "all warrants" in the

preliminary clause; and inserted the first and second sentences and "When the warrants are issued in triplicate" at the beginning of the third sentence in the second paragraph after the numbered subdivisions.

75-6811. Recording and payment of warrants by county treasurer. Immediately after receiving a duplicate warrant or a warrant listing from a district, the county treasurer shall enter the amount and number of such warrant on his accounting records under the fund identified on such warrant or listing. The recording of the warrants shall allow for the computation of the unexpended amount of a budgeted fund from the accounting records.

Whenever it appears to the county treasurer that a budgeted fund is so nearly exhausted that the issuance of another warrant will cause the overexpenditure of such budget, the county treasurer shall immediately notify the appropriate district of the expended condition of the budget and the district shall not issue another warrant against such fund that would overexpend the budget.

After receiving a duplicate warrant or warrant listing that contains a warrant which will exceed the unexpended balance of a budgeted fund, the county treasurer shall immediately notify the district of such overdraft. If the district has not corrected the overdraft before the presentation of the warrant for payment, the county treasurer shall refuse to pay or register such warrant, and shall endorse across the face of such warrant "Payment and Registration Refused, Insufficient Budget" and return the warrant to the person presenting it for payment.

Whenever a warrant will overexpend the cash balance of a nonbudgeted fund, the county treasurer shall refuse to pay or register such warrant, and shall endorse across the face of such warrant "Payment and Registration Refused, Insufficient Funds" and return the warrant to the person presenting it for payment. The county treasurer shall immediately notify the district of such refusal to pay or register the warrant drawn on a nonbudgeted fund.

History: En. 75-6811 by Sec. 247, Ch. 5, L. 1971; amd. Sec. 3, Ch. 241, L. 1973.

Amendments

The 1973 amendment inserted "or a warrant listing" following "duplicate warrant" and "or listing" at the end of the first sentence of the first paragraph; deleted "and appropriation item" following "under the fund" in the first sentence of the first paragraph; substituted "unexpended amount of a budgeted fund" for "unexpended appropriation amount of appropriation items of a budgeted fund" in

the second sentence of the first paragraph; deleted "an appropriation item of" before "a budgeted fund" in the second paragraph; twice substituted "budget" for "appropriation item" in the second paragraph; substituted "fund that would overexpend the budget" for "appropriation item until its budgeted amount has been increased" at the end of the second paragraph; inserted "or a warrant listing that contains a warrant" near the beginning of the third paragraph; deleted "an original or revised amount of an appropriation item" following "unexpended

ed balance of" in the first sentence of the third paragraph; deleted "an appropriation item" following "the overdraft" near the beginning of the second sentence of the third paragraph; deleted "original" prior to "warrant for pay-

ment" in the second sentence of the third paragraph; substituted " 'Budget' " for " 'Appropriation' " near the end of the third paragraph; and deleted "of registration" at the end of the third paragraph.

75-6811.1. Cancellation of outstanding warrants—duplication. The trustees of any school district shall be authorized to cancel any warrant that has been issued for at least one (1) year. However, the contractual obligation of the district that has been satisfied by the issuance of the warrant shall not be terminated until the time specified by section 93-2603 has elapsed. When a warrant has been canceled and the obligation has not terminated under section 93-2603, the district may issue a duplicate warrant without the completion of an indemnity bond by the payee.

History: En. Sec. 1, Ch. 365, L. 1973.

payment of issued warrants one (1) year after the date of issue.

Title of Act

An act to allow school districts to stop

75-6812. Transfer among appropriation items of a fund. Whenever it appears to the trustees of any district that the appropriated amount of any item of a budgeted fund of the final budget or the emergency budget is in excess of the amount actually required during the school fiscal year for such appropriation item, the trustees may transfer any or all of the excess appropriation amount to any other appropriation item of the same budgeted fund.

Such transfers shall not be made between different funds of the same district or between similar funds of different districts except as specifically provided by this title. The trustees shall enter the authorized transfers upon the permanent records of the district.

History: En. 75-6812 by Sec. 248, Ch. 5, L. 1971; amd. Sec. 4, Ch. 241, L. 1973.

manent records of the district" for "immediately notify the county treasurer in writing of any transfer between appropriation items and the county treasurer shall enter such transfer on his accounting records" at the end of the second paragraph.

Amendments

The 1973 amendment substituted "enter the authorized transfers upon the per-

CHAPTER 69—STATE EQUALIZATION AID TO PUBLIC SCHOOLS

- Section**
- 75-6902. Definition and calculation of average number belonging (ANB).
- 75-6903. Circumstances under which the regular average number belonging may be increased.
- 75-6904. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase.
- 75-6905. Maximum-general-fund-budget-without-a-voted-levy schedules for elementary and high schools.
- 75-6905.1. Seventh and eighth grade ANB.
- 75-6906. Definition of foundation program and its proportion of the maximum-general-fund-without-a-voted-levy schedule amount, and nonisolated school foundation program financing.
- 75-6907. Definition of interest and income moneys.
- 75-6908. Distribution of interest and income moneys by superintendent of public instruction.
- 75-6912. Basic county tax and other revenues for county equalization of elementary district foundation program.

- 75-6913. Basic special levy and other revenues for county equalization of high school district foundation program.
- 75-6915. Formula for apportionment of county equalization moneys.
- 75-6916. Definition of and revenue for state equalization aid.
- 75-6917. Purpose of state equalization aid and duties of the board of public education for distribution.
- 75-6917.1. Distribution of excess state equalization moneys.
- 75-6918. Duties of the superintendent of public instruction for state equalization aid distribution.
- 75-6921. Additional state levy for state deficiency.
- 75-6922. Permissive levy.
- 75-6923. Additional levy for general fund and election for authorization to impose.
- 75-6927. Proration and calculation of foundation program for a joint district.

75-6902. Definition and calculation of average number belonging (ANB).

The term "average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district. Average number belonging shall be computed by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the current school fiscal year, and by dividing such total by one hundred eighty (180). Attendance for a part of a morning session or a part of an afternoon session by a pupil shall be counted as attendance for one-half ($\frac{1}{2}$) day. In calculating the ANB for pupils enrolled in a program established under section 75-7507 prior to January 1, 1974, or pursuant to section 75-7507 (1), attendance at, or absence from, a regular session of the program for at least two hours of either a morning or an afternoon session will be counted as one-half ($\frac{1}{2}$) of a day attended or absent as the case may be. If a variance has been granted as provided in section 75-7403, ANB will be computed in a manner prescribed by the superintendent of public instruction but in no case shall the ANB exceed one-half ($\frac{1}{2}$) for each kindergarten pupil. When any pupil has been absent, with or without excuse, for more than ten (10) consecutive school days, including pupil instruction related days, his absence after the tenth (10th) day of absence shall not be included in the aggregate days of absence and his enrollment in the school shall not be considered in the calculation of the average number belonging until he resumes attendance at school.

If a student spends less than half his time in the regular program and the balance of his time in school in the special education program, he shall be considered a full-time special pupil but shall not be considered regularly enrolled for ANB purposes. If a student spends half or more of his time in school in the regular program and the balance of his time in the special education program he shall be considered regularly enrolled for ANB purposes.

The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district shall be calculated, individually, for each school except that when:

(1) * * * [Same as parent volume.]

(2) a junior high school which has been approved and accredited as a junior high school is located within the incorporated limits of a city or town in which a high school is located, all of the regularly enrolled, full-time

pupils of the junior high school shall be considered as high school district pupils for the purposes of calculating the average number belonging of the high schools located within the incorporated limits of such city or town;

(3) a middle school has been approved and accredited, in which case pupils below the seventh grade shall be considered elementary school pupils for ANB purposes, and the seventh and eighth grade pupils shall be considered high school pupils for ANB purposes; or

(4) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school shall not be eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the foundation program for such district.

History: En. 75-6902 by Sec. 252, Ch. 5, L. 1971; amd. Sec. 1, Ch. 345, L. 1973; amd. Sec. 1, Ch. 343, L. 1974; amd. Sec. 3, Ch. 352, L. 1974; amd. Sec. 1, Ch. 373, L. 1974.

Compiler's Notes

This section was amended three times in 1974, once by Ch. 343, once by Ch. 352, and once by Ch. 373. The amendatory acts did not mention or incorporate the changes made by the others. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by all amendments.

Amendments

The 1973 amendment inserted the fourth sentence in the first paragraph; and de-

leted a final paragraph permitting the inclusion of six-year-old kindergarten pupils in computing ANB.

Chapter 343, Laws of 1974, inserted the second paragraph pertaining to students enrolled in the regular program and in the special education program.

Chapter 352, Laws of 1974, inserted subdivision (3) pertaining to middle schools; redesignated former subdivision (3) as subdivision (4); and substituted "board of public education" for "board of education" in subdivision (4).

Chapter 373, Laws of 1974, inserted in the first paragraph the sentence pertaining to computations where a variance has been granted as provided in section 75-7403.

75-6903. Circumstances under which the regular average number belonging may be increased. The average number belonging of a school for a given school fiscal year, calculated in accordance with the ANB formula prescribed in section 75-6902, may be increased when:

(1) to (3) * * * [Same as parent volume.]

(4) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging shall be based on estimates of increased enrollment approved by the superintendent of public instruction and shall be computed in the manner prescribed by section 75-6904;

(5) for the initial year of operation of a program established under section 75-7507 (1), the ANB to be used for budget purposes is the same as one-half ($\frac{1}{2}$) the number of five (5) year old children residing in the district as of October 1 of the preceding school year, either as shown on the official school census, or as determined by some other procedure approved by the superintendent of public instruction; or

(6) a special full-time pupil, as defined in section 75-6902, in a given school year will no longer be considered a special full-time pupil in the ensuing school year. The superintendent of public instruction may grant one ANB for such pupil for the ensuing school year.

History: En. 75-6903 by Sec. 253, Ch. 5, L. 1971; amd. Sec. 4, Ch. 345, L. 1973; amd. Sec. 2, Ch. 343, L. 1974.

Amendments

The 1973 amendment added the provisions of subdivision (5).

The 1974 amendment deleted former subdivision (4) relating to allowable increase in the average number belonging in a district conducting a special education class or program; redesignated former subdivision (6) as (5); added subdivision (6);

and made minor changes in phraseology and punctuation.

Effective Date

Section 5 of Ch. 345, Laws 1973 read "This act is effective on July 1, 1974."

75-6904. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase. A district which anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in subsection (5) of section 75-6903, may increase its foundation program for the ensuing school fiscal year in accordance with the following provisions:

(1) The average number belonging used for the establishment of the foundation program for the current year and for each year of the immediately preceding three (3) years shall be used to calculate the percentage increase or decrease in average number belonging for the current year's foundation program over the immediately preceding year, and similarly calculate the percentage increase or decrease in average number belonging for each of the two preceding years. The three (3) annual percentage increases or decreases shall be averaged to obtain the average annual percentage increase or decrease in average number belonging.

(2) The district shall estimate the current year's average number belonging by totaling the aggregate days of attendance and aggregate days of absence realized in the district through April 30 and dividing such total by one hundred eighty (180). The resulting average number belonging shall be increased by the ratio that the total number of planned school days in the current school fiscal year bears to the number of school days completed through April 30.

(3) and (4). * * * [Same as parent volume.]

(5) The budget board shall review the application to determine if the district is eligible for an increase in its foundation program. The budget board may accept, reject, or adjust the district's estimate of the ensuing year's average number belonging. After approving an estimate, the budget board shall:

(a). * * * [Same as parent volume.]

(b) approve an increase of the average number belonging used to establish the ensuing year's foundation program in accordance with subsection (7) if the increase in subsection (5) (a) above is at least twice the average annual percentage increase as provided in subsection (1) above or six per cent (6%) whichever is larger.

(6) and (7). * * * [Same as parent volume.]

History: En. 75-6904 by Sec. 254, Ch. 5, L. 1971; amd. Sec. 1, Ch. 113, L. 1973.

Amendments

The 1973 amendment deleted "To determine if a district is eligible for an increased foundation program due to an unusual enrollment increase," from the beginning of subsection (1); deleted "When a district is eligible under subsection (1),"

from the beginning of subsection (2); deleted "as provided in subsection (1) above and to determine if the estimate of the anticipated increase in average number belonging is substantiated" from the first sentence in subsection (5); and added "or six per cent (6%) whichever is larger" to the end of paragraph (b) of subsection (5).

75-6905. Maximum-general-fund-budget-without-a-voted-levy schedules for elementary and high schools. The total amount of the general fund budget of any district shall not be greater than the general fund budget amount specified in the following schedules, except when a district has adopted an emergency general fund budget under the provisions of section 75-6727 or when a district has voted an additional levy under the provisions of section 75-6923.

Elementary School Schedule for 1973-74

(1) For each elementary school having an ANB of nine (9) or fewer pupils, the maximum shall be seven thousand eight hundred six dollars and fifty cents (\$7,806.50), if said school is approved as an isolated school.

(2) For schools with an ANB of ten (10) pupils, but less than eighteen (18) pupils, the maximum shall be seven thousand eight hundred six dollars and fifty cents (\$7,806.50) plus two hundred seventy-six dollars and fifty cents (\$276.50) per pupil on the basis of the average number belonging over nine (9).

(3) For schools with an ANB of eighteen (18) pupils and employing one (1) teacher, the maximum shall be ten thousand two hundred eighty-six dollars (\$10,286) plus three hundred sixty-four dollars and fifty cents (\$364.50) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of twenty-five (25).

(4) For schools with an ANB of eighteen (18) pupils and employing two (2) full-time teachers, the maximum shall be seventeen thousand five hundred eighty-six dollars (\$17,586) plus two hundred fifty-two dollars and fifty cents (\$252.50) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of fifty (50).

(5) For schools having an ANB in excess of forty (40) the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than forty (40) and employing a minimum of three (3) teachers, the maximum of six hundred forty-two dollars and fifty cents (\$642.50) shall be decreased at the rate of forty-three cents (\$.43) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of six hundred sixteen dollars and fifty cents (\$616.50) shall be decreased at the rate of fifty-one cents (\$.51) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed five hundred thirteen dollars and fifty cents (\$513.50) for each pupil.

(6). * * * [Same as parent volume.]

High School Schedule for 1973-74

(7) For each high school having an ANB of twenty-four (24) or fewer pupils, the maximum shall be thirty-seven thousand five hundred ten dollars (\$37,510).

(8) For a secondary school having an ANB of more than twenty-four (24) pupils, the maximum one thousand five hundred sixty-two dollars

and seventy-five cents (\$1,562.75) shall be decreased at the rate of nine dollars seventy-five cents (\$9.75) for each additional pupil until the ANB shall have reached a total of forty (40) such pupils. For a school having an ANB of more than forty (40) pupils, the maximum of one thousand four hundred six dollars and seventy-five cents (\$1,406.75) shall be decreased at the rate of six dollars sixty cents (\$6.60) for each additional pupil until the ANB shall have reached one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, a maximum of one thousand nine dollars and seventy-five cents (\$1,009.75) shall be decreased at the rate of two dollars fifteen cents (\$2.15) for each additional pupil until the ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, the maximum of seven hundred ninety-four dollars and seventy-five cents (\$794.75) shall be decreased by forty-nine cents (\$.49) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of seven hundred forty-six dollars and seventy-five cents (\$746.75) shall be decreased at the rate of thirteen cents (\$.13) until the ANB shall have reached six hundred (600) pupils. For a school having an ANB over six hundred (600) pupils, the maximum shall not exceed seven hundred eight dollars and seventy-five cents (\$708.75) per pupil.

(9). * * * [Same as parent volume.]

Elementary School Schedule for 1974-75 and Succeeding Years

(10) For each elementary school having an ANB of nine (9) or fewer pupils, the maximum shall be eight thousand one hundred forty-nine dollars and fifty cents (\$8,149.50), if said school is approved as an isolated school.

(11) For schools with an ANB of ten (10) pupils, but less than eighteen (18) pupils, the maximum shall be eight thousand one hundred forty-nine dollars and fifty cents (\$8,149.50) plus three hundred fourteen dollars and fifty cents (\$314.50) per pupil on the basis of the average number belonging over nine (9).

(12) For schools with an ANB of eighteen (18) pupils and employing one (1) teacher, the maximum shall be ten thousand nine hundred seventy-two dollars (\$10,972) plus four hundred two dollars and fifty cents (\$402.50) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of twenty-five (25).

(13) For schools with an ANB of eighteen (18) pupils and employing two (2) full-time teachers, the maximum shall be eighteen thousand two hundred seventy-two dollars (\$18,272) plus two hundred ninety dollars and fifty cents (\$290.50) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of fifty (50).

(14) For schools having an ANB in excess of forty (40) the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than forty (40) and employing a minimum of three (3) teachers, the maximum of six hundred eighty dollars

and fifty cents (\$680.50) shall be decreased at the rate of forty-three cents (\$.43) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of six hundred fifty-four dollars and fifty cents (\$654.50) shall be decreased at the rate of fifty-one cents (\$.51) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed five hundred and fifty-one dollars and fifty cents (\$551.50) for each pupil.

(15) * * * [Same as parent volume.]

High School Schedule for 1974-75 and Succeeding Years

(16) For each high school having an ANB of twenty-four (24) or fewer pupils, the maximum shall be thirty-eight thousand six hundred sixty-two dollars (\$38,662).

(17) For a secondary school having an ANB of more than twenty-four (24) pupils, the maximum one thousand six hundred ten dollars and seventy-five cents (\$1,610.75) shall be decreased at the rate of nine dollars seventy-five cents (\$9.75) for each additional pupil until the ANB shall have reached a total of forty (40) such pupils. For a school having an ANB of more than forty (40) pupils, the maximum of one thousand four hundred fifty-four dollars and seventy-five cents (\$1,454.75) shall be decreased at the rate of six dollars sixty cents (\$6.60) for each additional pupil until the ANB shall have reached one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, a maximum of one thousand fifty-seven dollars and seventy-five cents (\$1,057.75) shall be decreased at the rate of two dollars fifteen cents (\$2.15) for each additional pupil until the ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, the maximum of eight hundred forty-two dollars and seventy-five cents (\$842.75) shall be decreased by forty-nine cents (\$.49) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of seven hundred ninety-four dollars and seventy-five cents (\$794.75) shall be decreased at the rate of thirteen cents (\$.13) until the ANB shall have reached six hundred (600) pupils. For a school having an ANB over six hundred (600) pupils, the maximum shall not exceed seven hundred fifty-six dollars and seventy-five cents (\$756.75) per pupil.

(18) and (19) * * * [Same as parent volume.]

(20) For the purpose of establishing the maximum budget without a vote amount for current year special education program for a school district, the superintendent of public instruction will determine the total estimated cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget will be prepared on forms provided by the superintendent of public instruction and will set out for each program

(a) the estimated allowable costs associated with operating the program where allowable costs are as defined in section 75-7813.1;

(b) the number of pupils expected to be enrolled in the program; and

(c) any other data required by the superintendent of public instruction for budget justification purposes and to administer the provisions of this act. The total amount of allowable costs approved by the superintendent of public instruction shall be the special education maximum-budget-without-a-vote amount for current year special education program purposes. The total amount of allowable costs that are approved for the special education budget shall not, under any condition, be less than the maximum-budget-without-a-vote amount for one regular ANB for each special full-time pupil in the school district.

(21) If a special education program is implemented or expanded during a given school term too late to be included in the determination of the district maximum-budget-without-a-vote for the school year as prescribed in this chapter, then subject to the approval of the program by the superintendent, under the emergency budget provisions of section 75-6723(5), allowable costs approved under the budgeting provisions of section 75-6905 (20) for the operation of the program during the given year may be added to the maximum-budget-without-a-vote amount for special education for the subsequent school year. Such costs must be recorded as "previous year special education expenses" in the school district budget for the subsequent school year.

(22) The sum of the previous year special education expenses as defined in subsection (21) above, and the maximum-budget-without-a-vote for current year special education as defined in subsection (20) shall be the special education budget for accounting purposes.

The maximum-budget-without-a-vote for special education will be added to the maximum-budget-without-a-vote of the regular program ANB defined in sections 75-6902 and 75-6903 to obtain the total maximum-budget-without-a-vote for the district.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 345 and once by Ch. 347. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment updated the schedules two years for each classification; and increased funding levels in each category; for prior funding levels see parent volume.

Chapter 345, Laws of 1974, added subdivisions (20) to (22) to the "High School Schedule for 1974-75 and Succeeding

Years" and deleted a final paragraph which read: "The general fund budget amount determined for each school of a district under the schedules provided in this section shall be totaled to determine the maximum-general-fund-budget-without-a-voted-levy for such district."

Chapter 347, Laws of 1974, increased the funding levels from \$8,037 to \$8,149.50 in subdivision (10); from \$8,037 plus \$302 per pupil to \$8,149.50 plus \$314.50 per pupil in subdivision (11); from \$10,747 plus \$390 per pupil to \$10,972 plus \$402.50 per pupil in subdivision (12); from \$18,047 plus \$278 per pupil to \$18,272 plus \$290.50 per pupil in subdivision (3) from \$668 to \$680.50, from \$642 to \$654.50, and from \$539 to \$551.50, respectively, in subdivision (14); from \$38,362 to \$38,662 in subdivision (16); and from \$1,598.25 to \$1,610.75, from \$1,442.25 to \$1,454.75, from \$1,045.25 to \$1,057.75 from \$830.25 to \$842.75, from \$782.25 to \$794.75, and from \$744.25 to \$756.75, respectively, in subdivision (17).

75-6905.1. Seventh and eighth grade ANB. The ANB calculated for grades seven (7) and eight (8) shall be at the high school ANB rate provided that the school meets the standards for accreditation of a middle school. When such pupils are actually enrolled in an elementary school, the amount of the general fund budget per ANB shall be the same as that of the high school district within which the elementary school is located. To determine the total enrollment of such an elementary school for ANB purposes the seventh and eighth grade pupils shall be included in such total.

History: En. 75-6905.1 by Sec. 1, Ch. 354, L. 1974.

Title of Act

An act providing that all seventh and eighth grade pupils be counted as high school pupils for ANB budgeting.

75-6906. Definition of foundation program and its proportion of the maximum-general-fund-without-a-voted-levy schedule amount, and nonisolated school foundation program financing. (1) As used in this title, the term "foundation program" shall mean the minimum operating expenditures as established herein, that are sufficient to provide for the educational program of a school. It shall be financed by (a) county equalization moneys, (b) state equalization aid, and (c) when required, moneys from an additional state levy for a state deficiency. The foundation program relates only to those expenditures authorized by a district's general fund budget and shall not include expenditures from any other fund.

(2) The dollar amount of the foundation program shall be eighty per cent (80%) of the maximum-general-fund-budget-without-a-voted-levy limitation as set forth in the schedules in section 75-6905. The foundation program of an elementary school having an ANB of nine (9) or fewer pupils which is not approved as an isolated school under the provisions of section 75-6608 shall be eighty per cent (80%) of the schedule amount but the county and state shall participate in financing one-half ($\frac{1}{2}$) of the foundation program and the district shall finance the remaining one-half ($\frac{1}{2}$) by a tax levied on the property of the district. When a school of nine (9) or fewer pupils is approved as isolated under the provisions of section 75-6608, the county and state shall participate in the financing of the total amount of the foundation program.

(3) Funds provided to support the special education accounting budget may be expended only for special education purposes as approved by the superintendent of public instruction in accordance with the special education budgeting provisions of this title. Expenditures for special education shall be accounted for separately from the balance of the school district general fund. Transfers between items within the special education budget for accounting purposes may be made at the discretion of the board of trustees in accordance with the financial administration chapter of this title. The unexpended balance of the special education accounting budget shall carry over to the next year to reduce the amount of funding required to finance the district's ensuing year's maximum-budget-without-a-vote for special education.

History: En. 75-6906 by Sec. 256, Ch. 5, L. 1971; amd. Sec. 8, Ch. 137, L. 1973; amd. Sec. 2, Ch. 345, L. 1974.

Amendments

The 1973 amendment deleted from the first paragraph a third sentence reading:

"In addition, the elementary school foundation programs shall be supported by interest and income moneys."

The 1974 amendment inserted the numerical subsection designations at the be-

ginning of the first and second paragraphs; substituted "additional state levy" for "additional county levy" in clause (c) in subsection (1); added subsection (3); and made minor changes in style.

75-6907. Definition of interest and income moneys. As used in this title, the term "interest and income moneys" means the total of the following revenues, as provided for by article X, section 5 of the 1972 Montana constitution:

(1) to (4). * * * [Same as parent volume.]

The remaining five per cent (5%) of such revenues shall be annually credited to the public school fund.

History: En. 75-6907 by Sec. 257, Ch. 5, L. 1971; amd. Sec. 9, Ch. 137, L. 1973.

Amendments

The 1973 amendment substituted the

reference to the 1972 constitution in the preliminary paragraph for a reference to section 5, article XI of the 1889 constitution; and made a minor change in phraseology.

75-6908. Distribution of interest and income moneys by superintendent of public instruction. The state board of land commissioners shall annually deposit the interest and income moneys for each calendar year into the earmarked revenue fund for state equalization aid provided for by section 75-6916, R.C.M. 1947, by the last business day of February following the calendar year in which the moneys were received.

History: En. 75-6908 by Sec. 258, Ch. 5, L. 1971; amd. Sec. 10, Ch. 137, L. 1973.

Amendments

The 1973 amendment substituted "into the earmarked revenue fund for state equalization aid provided for by section

75-6916, R. C. M. 1947" for "to the credit of the account established by the state treasurer for such moneys"; and deleted four paragraphs relating to distribution of the interest and income moneys. For previous text, see parent volume.

75-6909 to 75-6911. Repealed.

Repeal

Sections 75-6909 to 75-6911 (Secs. 259 to 261, Ch. 5, L. 1971), relating to ap-

portionment and distribution of interest and income moneys, were repealed by Sec. 15, Ch. 137, Laws 1973.

75-6912. Basic county tax and other revenues for county equalization of elementary district foundation program. It shall be the duty of the county commissioners of each county to levy an annual basic tax of twenty-five (25) mills on the dollars of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of the elementary school districts in the county and to the earmarked revenue fund, state equalization aid account, in the following manner: In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenues identified in subsections (1) through (6) below shall be subtracted from the sum of the county elementary transportation obligation and the total of the foundation programs of all elementary districts of the county. If the basic levy of twenty-five (25) mills produces more revenue than is required to finance the difference

determined above, the county commissioners shall order the county treasurer to remit the surplus funds to the state treasurer for deposit to the earmarked revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.

The proceeds realized from the county's portion of the levy prescribed by this section and the revenues from the following sources shall be used for the equalization of the elementary district foundation programs of the county as prescribed in section 75-6914 and a separate accounting shall be kept of such proceeds and revenues by the county treasurer in accordance with subsection (1) of section 75-6805;

(1) to (6). * * * [Same as parent volume.]

History: En. 75-6912 by Sec. 262, Ch. 5, L. 1971; amd. Sec. 1, Ch. 355, L. 1973.

Amendments

The 1973 amendment substituted "for the purposes of local and state foundation program support" for "unless a basic levy of less than twenty-five (25) mills is sufficient to finance the total amount of the foundation programs of all the elementary districts of the county" at the end of the first sentence; inserted the portion of the second sentence preceding the colon; substituted "the amount of revenue raised by this levy which is retained by the county" for "if a lesser levy will be sufficient"

after "In order to determine" following the colon in the second sentence; substituted "If the basic levy of twenty-five (25) mills produces more than is required" at the beginning of the third sentence for "If a basic levy of less than twenty-five (25) mills is sufficient"; substituted the final part of the third sentence, beginning with "order the county treasurer to remit," for "fix a basic levy of such amount"; deleted from the first paragraph a final sentence prohibiting state equalization aid to elementary districts levying less than 25 mills; and inserted "the county's portion of" before "the levy" near the beginning of the second paragraph.

75-6913. Basic special levy and other revenues for county equalization of high school district foundation program. It shall be the duty of the county commissioners of each county to levy an annual basic special tax for high schools of fifteen (15) mills on the dollar of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of high school districts in the county and to the earmarked revenue fund, state equalization aid account, in the following manner: In order to determine the amount of revenue raised by this levy which is retained by the county, the estimated revenues identified in subsections (1) and (2) below shall be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county. If the basic levy for fifteen (15) mills produces more revenue than is required to finance the difference determined above, the county commissioners shall order the county treasurer to remit the surplus to the state treasurer for deposit to the earmarked revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.

The proceeds realized from the county's portion of the levy prescribed in this section and the revenues from the following sources shall be used for the equalization of the high school district foundation programs of the county as prescribed in section 75-6914, and a separate accounting shall be kept of these proceeds by the county treasurer in accordance with subsection (1) of section 75-6805:

(1) and (2). * * * [Same as parent volume.]

History: En. 75-6913 by Sec. 263, Ch. 5, L. 1971; amd. Sec. 2, Ch. 355, L. 1973.

Amendments

The 1973 amendment substituted "for the purposes of local and state foundation program support" for "unless a basic special levy for high schools of less than fifteen (15) mills is sufficient to finance the total amount of the foundation programs of all the high school districts of the county" at the end of the first sentence; inserted the portion of the second sentence preceding the colon; substituted "the amount of revenue raised by this levy which is retained by the county" for "if a lesser levy will be sufficient" shortly

after the colon in the second sentence; substituted "If the basic levy for fifteen (15) mills produces more revenue than is required" at the beginning of the third sentence for "If a basic special levy for high schools of less than fifteen (15) mills is sufficient"; substituted the final portion of the third sentence, beginning with "order the county treasurer to remit," for "fix a basic special levy for high schools of such amount"; deleted from the first paragraph a final sentence prohibiting state equalization aid to high school districts levying less than 15 mills; and inserted "the county's portion of" before "the levy" near the beginning of the second paragraph.

75-6915. Formula for apportionment of county equalization moneys.

After making such deductions prescribed in section 75-6914, the county superintendent shall apportion the remaining amount of moneys available in the basic county tax account to the several public elementary districts of the county and in the basic special tax for high schools account to the several public secondary districts of the county in proportion to their needs under the foundation program in accordance with the following procedure:

(1) Determine the percentage that the county equalization moneys available for the support of the foundation programs of the public elementary districts in the county is of the total amount of the foundation programs of all public elementary districts.

(2) Multiply the foundation program amount of each public elementary district by the percentage determined in subsection (1) above to determine the portion of the county equalization moneys available to each public elementary district.

The above procedure shall also be applied for public secondary districts.

No territory situated within a county shall be excluded from the apportionment of the county equalization moneys under this section solely because such territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year shall not be considered in the apportionment procedure prescribed in this section.

When the total amount of the available county moneys for apportionment under this section is greater than the amount of money to be apportioned under the apportionment procedure prescribed by this section, the excess amount of county moneys shall be retained by the county to be considered as financing during the ensuing school fiscal year under the requirements of subsection (5) of section 75-6912 or subsection (1) of section 75-6913.

The county equalization moneys apportioned under these procedures shall constitute the first source of revenue in calculating the financing of the public elementary and secondary district foundation program. The county superintendent shall use the apportionment procedure prescribed in this section in computing the estimated revenues for the financing of the ensuing year's foundation program for budgeting purposes.

History: En. 75-6915 by Sec. 265, Ch. 5, L. 1971; amd. Sec. 11, Ch. 137, L. 1973; amd. Sec. 1, Ch. 255, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 137, and once by Ch. 255. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 137, Laws of 1973, inserted "public" before "elementary district" throughout the section; substituted "public secondary districts" for "high school districts" throughout the section; deleted headings dividing numbered paragraphs applicable to elementary schools and to high schools; deleted former paragraphs (1) to (5) applicable to elementary schools; redesignated former paragraphs

(6) and (7) as (1) and (2); made newly redesignated paragraphs (1) and (2) applicable to elementary districts by substituting "public elementary district" for "high school district" throughout the paragraphs; inserted a new paragraph immediately after the numbered paragraphs; deleted "shall constitute the second source of revenue in calculating the financing of the elementary district foundation program and" before "shall constitute the first source of revenue" in the first sentence of the final paragraph; and inserted "elementary and" before "secondary district foundation program" at the end of the first sentence of the final paragraph.

Chapter 255, Laws of 1973, deleted from what is now the second paragraph after the numbered subdivisions a first sentence reading: "No district shall be deprived of its needful share of the county moneys apportioned under this section by reason of it being nonaccredited"; and made minor changes in phraseology.

75-6916. Definition of and revenue for state equalization aid. The following shall be paid into the earmarked revenue fund, for state equalization aid to public schools of the state:

- (1) twenty-five per cent (25%) of all moneys received from the collection of income taxes under chapter 49 of Title 84, R.C.M. 1947,
- (2) twenty-five per cent (25%) of all moneys received from the collection of corporation license taxes under chapter 15 of Title 84, R.C.M. 1947, as provided by section 84-1901, R.C.M. 1947,
- (3) one-half (1/2) of the moneys received from the treasurer of the United States as the state's shares of oil and gas royalties under the Act of Congress of February 25, 1920,
- (4) interest and income moneys described in sections 75-6907 and 75-6908, R.C.M. 1947, and
- (5) in addition to these revenues, the surplus revenues collected by the counties for foundation program support according to sections 75-6912 and 75-6913 shall be paid into the same earmarked revenue fund.

As used in this title, the term "state equalization aid" means those moneys deposited in the earmarked revenue fund as required in this section plus any legislative appropriation of moneys from other sources for distribution to the public schools for the purpose of equalization of the foundation program.

History: En. 75-6916 by Sec. 266, Ch. 5, L. 1971; amd. Sec. 12, Ch. 137, L. 1973; amd. Sec. 3, Ch. 355, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 137 and once by Ch. 355. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite

section embodying the changes made by both amendments.

Amendments

Chapter 137, Laws of 1973, set off in numbered paragraphs the items to be paid into the fund; inserted a new paragraph (4); and made minor changes in phraseology.

Chapter 355, Laws of 1973, inserted a new sentence which the compiler has designated as paragraph (5).

75-6917. Purpose of state equalization aid and duties of the board of public education for distribution. Except as provided in 75-6917.1, the moneys available for state equalization aid shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any and all costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings, new grounds, and transportation.

The board of public education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(1) and (2) * * * [Same as parent volume.]

(3) order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to such aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of public education shall not increase or decrease the state equalization aid distribution to any district on account of any difference which may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

Should a district receive more state equalization aid than it is entitled to, the county treasurer must return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the municipal division of the department of intergovernmental relations.

History: En. 75-6917 by Sec. 267, Ch. 5, L. 1971; amd. Sec. 1, Ch. 166, L. 1973; amd. Sec. 2, Ch. 345, L. 1973; amd. Sec. 1, Ch. 346, L. 1973; amd. Sec. 1, Ch. 55, L. 1974.

Compiler's Notes

This section was amended three times in 1973, once by Ch. 166, once by Ch. 345 and once by Ch. 346. None of the amendatory acts mentioned or incorporated the changes made by the others. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by all amendments.

Amendments

Chapter 166, Laws of 1973, corrected the name of the board of public education throughout the section; and deleted "in the months of December and April of each school fiscal year," from the beginning of subdivision (3).

Chapter 345, Laws of 1973, deleted "kindergarten" following "adult education program" near the end of the first paragraph.

Chapter 346, Laws of 1973, added the last paragraph.

The 1974 amendment inserted "Except as provided in 75-6917.1," at the beginning of the section; and made minor changes in style and punctuation.

75-6917.1. Distribution of excess state equalization moneys. Moneys appropriated for foundation program purposes are exempt from the provisions of section 82-109(b), R. C. M. 1947. Moneys appropriated for foundation program purposes shall be expended to as great an extent as possible, irrespective of the availability of foundation program revenues from other sources. Any unencumbered funds remaining in the public school equalization earmarked revenue account at the end of the fiscal year shall be transferred to the state permissive school levies earmarked revenue account for the purpose of reducing the state-wide levy for public school permissive levy deficiency requirements.

History: En. 75-6917.1 by Sec. 2, Ch. 55, L. 1974.

state-wide permissive levy deficiency levy; and providing an effective date.

Title of Act

An act amending section 75-6917, R. C. M. 1947, to transfer unexpended public school equalization moneys to the permissive levy deficiency fund to reduce the

Effective Date

Section 3 of Ch. 55, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved February 27, 1974.

75-6918. Duties of the superintendent of public instruction for state equalization aid distribution. The superintendent of public instruction shall administer the distribution of the state equalization aid by:

- (1). * * * [Same as parent volume.]
- (2) recommending to the board of public education the annual entitlement of all districts to state equalization aid to enable the board of public education to order the distribution of state equalization aid;
- (3) distributing by state warrant the state equalization aid for each district entitled to such aid, to the county treasurer of the county where the district is located, in accordance with the distribution ordered by the board of public education;
- (4). * * * [Same as parent volume.]
- (5) reporting to the board of public education the estimated amount which will be available for state equalization aid; and
- (6). * * * [Same as parent volume.]

History: En. 75-6918 by Sec. 268, Ch. 5, L. 1971; amd. Sec. 2, Ch. 166, L. 1973.

section; and deleted "at its meeting in July and December of each year" and "for the next succeeding six month period, commencing on July 1 and January 1" from subsection (5).

Amendments

The 1973 amendment inserted "public" in the name of the board throughout the

75-6921. Additional state levy for state deficiency. If the estimated state equalization level made under the provisions of section 75-6920 is less than one hundred per cent (100%), it shall be the duty of the director of the department of revenue to levy, separately for the elementary districts and the high school districts, additional taxes in such number of mills on the taxable value of all taxable property within the state as shall be required to complete the financing of the foundation programs of all elementary districts or all high school districts of the state.

The state treasurer shall keep a separate accounting of the proceeds realized from these mill levies. The superintendent of public instruction shall apportion the proceeds of the mill levies to the elementary districts of the state or the high school districts of the state, whichever the case may be, on the following basis:

- (1) Determine the total amount required from this source of revenue by the several elementary or high school districts of the state.
- (2) to (4). * * * [Same as parent volume.]

When the total amount of the proceeds realized from these mill levies is greater than the requirements of all the elementary districts or high school districts of the state, whichever the case may be, the excess amount of moneys shall be retained by the state for reduction of the ensuing year's

additional state levy for elementary schools or high schools or, if there is no additional state levy under this section the excess may be transferred to the state equalization aid account for the reduction of the legislative appropriation.

The apportionment of state moneys under this section shall be known as the "additional state levy for state deficiency" and it shall be the last source of revenue in calculating the financing of the elementary district foundation program and the high school district foundation program.

The superintendent of public instruction shall compute the budgeted requirement for this source of revenue for each district and shall supply the total state requirements for the elementary district foundation programs and the high school district foundation programs to the director of the department of revenue on the second Monday of August.

History: En. 75-6921 by Sec. 271, Ch. 5, L. 1971; amd. Sec. 4, Ch. 355, L. 1973.

Amendments

The 1973 amendment substituted references to the state, the director of the department of revenue, the state treasurer and the superintendent of public instruction, respectively, throughout the section for references to the county, the county commissioners, the county treasurer and the county superintendent; deleted "As

provided in section 75-6805" from the beginning of the second paragraph; added to the first paragraph after the numbered clauses the final clause, beginning with "or, if there is no additional state levy"; deleted "and for the county" after "source of revenue for each district" in the final paragraph; substituted "total state requirements" for "county requirements" in the final paragraph; and deleted "in accordance with section 75-6717" from the end of the section.

75-6922. Permissive levy. (1) Whenever the trustees of any district shall deem it necessary to adopt a general fund budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for such district as established by the schedule in section 75-6905, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. The financing of such general fund budget amount shall be known as the "permissive levy," and it shall be financed by a levy on the taxable value of all taxable property within the district as prescribed in section 75-6926, supplemented with revenue from a levy on all the taxable property in the state.

(2) The district levies to be set for the purpose of funding the permissive amount are determined as follows:

(a) For each elementary school district, the county commissioners shall annually set a levy not exceeding nine (9) mills on all the taxable property in the district for the purpose of funding the permissive levy requirements of the district. If the amount of revenue raised by this levy is not sufficient to fully fund the district's permissive levy requirements, the amount of the deficiency shall be paid to the district from the earmarked revenue fund, permissive levy account, according to the provisions of subsection (3) of this section.

(b) For each high school district, the county commissioners shall annually set a levy not exceeding six (6) mills on all taxable property in the district for the purpose of funding the permissive levy requirements of the district. If the amount of revenue raised by this levy is not sufficient to fully fund the district's permissive levy requirements, the amount of the deficiency shall be paid to the district from the earmarked revenue fund,

permissive levy account, according to the provisions of subsection (3) of this section.

(3) The director of the department of revenue shall annually set a levy on all the property of the state which will produce enough revenue to fund the permissive levy deficiency of the elementary and high school districts of the state. The proceeds of this levy shall be deposited to the earmarked revenue fund, permissive levy account, and shall be distributed to the elementary and high school districts in accordance with their entitlements as determined by the superintendent of public instruction according to the provisions of subsections (1) and (2) of this section.

Such distribution shall be made in two payments. The first payment shall be made at the same time as the first distribution of state equalization aid is made after January 1 of the fiscal year. The second payment shall be made at the same time as the last payment of state equalization aid is made for the fiscal year. If sufficient revenue is not collected to completely cover the permissive levy requirement of the districts, each district will receive the same percentage of its total requirement. Surplus revenue in the permissive levy account shall be used to reduce the state levy required for the next succeeding fiscal year. Interest earned on investment of permissive levy funds shall be deposited to the earmarked revenue fund, permissive levy account, for distribution during the next succeeding fiscal year.

History: En. 75-6922 by Sec. 272, Ch. 5, L. 1971; amd. Sec. 5, Ch. 355, L. 1973.

Amendments

The 1973 amendment designated the for-

mer section as subsection (1); added "supplemented with revenue from a levy on all of the taxable property in the state" at the end of subsection (1); and added subsections (2) and (3).

75-6923. Additional levy for general fund and election for authorization to impose. The trustees of any district may propose to adopt a general fund budget in excess of the general fund budget amount for such district as established by the schedule in section 75-6905 for any of the following purposes:

(1) to (4) * * * [Same as parent volume.]

However, the trustees may not adopt a total general fund budget which exceeds one hundred twelve per cent (112%) of the general fund budget for the preceding year, unless such budget is adopted under conditions as provided in sections 75-6723 through 75-6730, or under the following conditions:

(a) new programs which are approved under 75-6903 or existing programs which are expanded as a result of ANB increases approved under 75-6903;

(b) federal programs which are continued with local funds if federal funds are withdrawn or withheld;

(c) new programs of special education are approved.

(2) The district levies to be set for the purpose of funding the per-

In subsection (a), above, the budget may exceed one hundred twelve per cent (112%) of the preceding year's budget by a dollar amount equal to the increase in the maximum budget without a vote resulting from the introduction of the new or expanded program and in subsection (b), above, by a dollar amount not to exceed the amount received from federal sources

for the preceding year. Nothing in this act shall prevent a school district from adopting a budget at least as large as the maximum budget without a vote as provided in section 75-6905, provided, however, for the fiscal year 1975, the trustees may adopt a total general fund budget which exceeds one hundred twelve per cent (112%) of the general fund budget for the preceding year if they file a notice of this increase with the superintendent of public instruction, setting forth the specific reasons for so increasing the budget.

When the trustees of any district determine that an additional amount of financing is required for the general fund budget that is in excess of the statutory schedule amount, the trustees shall submit the proposition of an additional levy to raise such excess amount of general fund financing to the electors who are qualified, under section 75-6410, to vote upon such proposition except that the Twin Bridges high school district may increase its general fund budget as established by section 75-6905, R. C. M. 1947, by the amount of tuition paid to the district the previous year under section 75-6319, R. C. M. 1947. Such special election shall be called and conducted in the manner prescribed by this title for school elections. The ballot for such election shall state the amount of money to be raised by additional property taxation, the approximate number of mills required to raise such money, and the purpose for which such money will be expended, and it shall be in the following format:

PROPOSITION

Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional tax levy is made)?

☐ FOR the additional levy.

☐ AGAINST the additional levy.

If the election on any additional levy for the general fund is approved by a majority vote of those electors voting at such election, the proposition shall carry and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall certify the additional levy amount authorized by such a special election on the budget form that is submitted to the county superintendent and the county commissioners shall levy such number of mills on the taxable value of all taxable property within the district as prescribed in section 75-6926, as are required to raise the amount of such additional levy.

Authorization to levy an additional tax under the provisions of this section shall be effective for only one (1) school fiscal year and shall be authorized by a special election conducted before the first day of August of the school fiscal year for which it is effective. Only one such additional levy for the maintenance and operation of the school programs of a high school district may be imposed by a high school district in a given school fiscal year.

History: En. 75-6923 by Sec. 273, Ch. 5, L. 1971; amd. Sec. 7, Ch. 83, L. 1971; amd. Sec. 6, Ch. 355, L. 1973; amd. Sec. 2, Ch. 214, L. 1974; amd. Sec. 1, Ch. 230, L. 1974; amd. Sec. 1, Ch. 346, L. 1974.

Compiler's Notes

This section was amended three times in 1974, once by Ch. 214, once by Ch. 230, and once by Ch. 346. None of the amendatory acts mentioned or incorporated the changes made by the others. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by all amendments.

Amendments.

The 1973 amendment inserted the two paragraphs (including clauses (a) and (b)) following subdivision (4).

Chapter 214, Laws of 1974 inserted the provision authorizing Twin Bridges High School District to increase its general fund budget by the amount of tuition

paid the previous year under section 75-6319.

Chapter 230, Laws of 1974, increased the percentage limitation on the amount trustees may propose in the general fund budget from 107% to 112% and inserted the proviso authorizing adoption of a budget for fiscal year 1975 exceeding 112% of the budget for the preceding year upon filing notice with the superintendent of public instruction.

Chapter 346, Laws of 1974, inserted clause (c) in the paragraph following subdivision (4) and substituted references to "subsection (a)" and "subsection (b)" for references to "subsection (2)(a)" and "subsection (2)(b)" in the paragraph following clause (c).

Effective Date

Section 2 of Ch. 214, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 14, 1974.

75-6927. Proration and calculation of foundation program for a joint district. In joint districts, the foundation program shall be prorated among the counties in which any part of the joint district is located for the purpose of determining the amount of each source of revenue for the foundation program for which each county is obligated. The proration of the joint district foundation program shall be calculated as follows:

(1) to (3). * * * [Same as parent volume.]

The portion of a joint district foundation program for each county, as determined in subsection (3) of this section, shall be considered as a separate foundation program in such county for the purposes of calculating the various revenues for the foundation program. After the calculation of the foundation program revenues, the remainder of the general fund revenues shall be calculated in accordance with the provisions for general fund financing.

History: En. 75-6927 by Sec. 277, Ch. 5, L. 1971; amd. Sec. 13, Ch. 137, L. 1973.

Amendments

The 1973 amendment deleted from the final paragraph a second sentence reading:

"The interest and income moneys available to joint elementary districts shall be considered as prorated to the several counties on the basis of each child's county of residence."

CHAPTER 70—SCHOOL BUSES AND TRANSPORTATION OF PUPILS

Section

- 75-7001. Definitions.
- 75-7002. School bus definition and identification requirements.
- 75-7004. Duties of board of public education.
- 75-7005. Duties of the superintendent of public instruction.
- 75-7006. Penalty for violating law, board of education policies or superintendent of public instruction rules and regulations.
- 75-7008. Duty of trustees to provide transportation—types of transportation—bus riding time limitation.
- 75-7013. Bid letting for contract bus—payments under transportation contract.
- 75-7019. Schedule of maximum reimbursement for individual transportation including provisions for isolation, room and board, and supervised study programs.

75-7001. Definitions. As used in this title, unless the context clearly indicates otherwise:

"Transportation" shall mean:

(1) and (2) * * * [Same as parent volume.]

An "eligible transportee" shall mean a public school pupil who:

(1) is not less than five (5) years of age nor has attained his twenty-first (21st) birthday;

(2) to (4) * * * [Same as parent volume.]

History: En. 75-7001 by Sec. 278, Ch. 5, L. 1971; amd. Sec. 1, Ch. 61, L. 1974.

Amendments

The 1974 amendment lowered the minimum age of an "eligible transportee" from six to five years.

75-7002. School bus definition and identification requirements. A "school bus" shall mean any motor vehicle which is owned by a district or other public agency or by a carrier under contract with such a district or public agency, and which complies with the bus standards established by the board of public education as determined by the Montana highway patrol's semiannual inspection of school buses and the superintendent of public instruction. Such bus may be operated by the district or other public agency for the conveyance of pupils or may be privately operated by a carrier to provide such conveyance of pupils under contract with a district or other public agency. Every school bus shall bear on the front and rear of the bus a plainly visible sign containing the words "school bus" in letters at least eight (8) inches in height. When a school bus is operated on a highway for purposes other than transporting pupils to and from school or for school functions, all markings identifying it as a school bus shall be concealed.

History: En. 75-7002 by Sec. 279, Ch. 5, L. 1971; amd. Sec. 2, Ch. 141, L. 1973.

the first sentence; and substituted "semi-annual inspection" for "annual inspection" near the end of the first sentence.

Amendments

The 1973 amendment substituted a reference to the board of public education for a reference to the board of education in

Cross-References

Highway patrol functions transferred, sec. 82A-1206.

75-7004. Duties of board of public education. The board of public education, by and with the advice of the chief of the Montana highway patrol and the superintendent of public instruction, shall adopt and enforce policies, not inconsistent with the Motor Vehicle Code, to provide uniform standards and regulations for the design, construction and operation of school buses in the state of Montana. Such policies shall:

(1) to (5). * * * [Same as parent volume.]

(6) prescribe any other policies for the operation of school buses which are not inconsistent with the Motor Vehicle Code, the minimum standards adopted by the national commission on safety education for school bus operation, the highway safety standards, and the transportation provisions of this title.

(7). * * * [Same as parent volume.]

The board of public education shall prescribe any other policy necessary for the proper administration and operation of individual transportation

programs that are not inconsistent with the transportation provisions of this title.

History: En. 75-7004 by Sec. 281, Ch. 5, L. 1971; amd. Sec. 1, Ch. 416, L. 1973.

Amendments

The 1973 amendment inserted "public" in the name of the board near the beginning of the preliminary paragraph and near the beginning of the final paragraph; deleted "the transportation programs that

are not inconsistent with" before "the transportation provisions" near the end of subdivision (6); and deleted from the final paragraph a first sentence reading, "The board of education shall promulgate a schedule that establishes the basis for increasing the individual transportation rates due to isolation as provided in subsection (3) of section 75-7019.

75-7005. Duties of the superintendent of public instruction. In order to have a uniform and equal provision of transportation by all districts in the state of Montana, the superintendent of public instruction shall:

(1) prescribe rules, regulations, and forms for the implementation and administration of the transportation policies adopted by the board of public education;

(2) and (3). * * * [Same as parent volume.]

(4) prescribe rules and regulations for the approval of individual transportation contracts, including the increases of the schedule rates due to isolation under the policy of the board of public education; and provide a degree of isolation chart to school district trustees to serve as a guide;

(5) to (7). * * * [Same as parent volume.]

(8) disburse the state transportation reimbursement in accordance with the provisions of law and the transportation policies of the board of public education.

History: En. 75-7005 by Sec. 282, Ch. 5, L. 1971; amd. Sec. 2, Ch. 416, L. 1973.

Amendments

The 1973 amendment inserted "public"

in the name of the board in subdivisions (1), (4) and (8); and added "and provide a degree of isolation chart to school district trustees to serve as a guide" to the end of subdivision (4).

75-7006. Penalty for violating law, board of education policies or superintendent of public instruction rules and regulations. Every district, its trustees and employees, and every person under a transportation contract with a district shall be subject to the policies prescribed by the board of public education and the rules and regulations prescribed by the superintendent of public instruction. When a district knowingly violates a transportation law or board of public education transportation policy, such district shall forfeit any reimbursement otherwise payable under sections 75-7022 and 75-7023 for bus miles actually traveled during that fiscal year in violation of such law or policies. The county superintendent shall suspend all such reimbursements payable to the district until the district corrects the violation. When the district corrects the violation, the county superintendent shall resume paying reimbursements to the district, but the amount forfeited may not be paid to the district.

When a person operating a bus under contract with a district knowingly fails to comply with the transportation law or the board of public education transportation policies, the district may not pay him for any bus miles traveled during the contract year in violation of such law or policies. Upon discovering such a violation, the trustees of the district

shall give written notice to the person that unless the violation is corrected within ten (10) days of the giving of notice, the contract will be canceled. The trustees of a district shall order the operation of a bus operated under contract suspended when the bus is being operated in violation of transportation law or policies and the trustees find that such violation jeopardizes the safety of pupils.

History: En. 75-7006 by Sec. 283, Ch. 5, L. 1971; amd. Sec. 1, Ch. 78, L. 1974.

sanctions for operating a school bus in violation of transportation law or policies.

Amendments

The 1974 amendment substituted "board of public education" for "board of education" in the first sentence and revised the

Effective Date

Section 2 of Ch. 78, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 4, 1974.

75-7008. Duty of trustees to provide transportation—types of transportation—bus riding time limitation. The trustees of any district may furnish transportation to an eligible transportee who attends a school of the district or has been granted permission to attend a school outside of the district. Whenever the trustees of a district provide transportation for any eligible transportee, the trustees must provide all eligible transportees of the district with transportation. The trustees shall furnish transportation when directed to do so by the county transportation committee and such direction is upheld by the superintendent of public instruction. The tendering of a contract to the parent or guardian whereby the district would pay the parent or guardian for individually transporting the pupil or pupils shall fulfill the district's obligation to furnish transportation for an eligible transportee. The parent or guardian of an eligible transportee may, at his discretion, provide transportation or arrange for transportation for his child at his own expense to any district willing to accept his child.

The type of transportation provided by a district may be:

(1) and (2). * * * [Same as parent volume.]

When the parent or guardian of an elementary pupil consents to a trip of over one (1) hour, the trustees may require such eligible transportee to ride a school bus for more than one (1) hour per trip.

History: En. 75-7008 by Sec. 285, Ch. 5, L. 1971; amd. Sec. 1, Ch. 245, L. 1973.

Effective Date

Section 2 of Ch. 245, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 9, 1973.

Amendments

The 1973 amendment inserted the fourth sentence in the first paragraph.

75-7013. Bid letting for contract bus—payments under transportation contract. Before any contract with a private party for the provision of school bus transportation is awarded, the trustees shall:

(1) secure bids by publishing at least three (3) calls for bids in a newspaper of the county that will give notice to the largest number of people of the district or in the official newspaper of the county during a period of twenty-one (21) days. The trustees shall let the contract to the lowest responsible bidder and the trustees shall have the right to reject any and all bids; or

(2) negotiate a new contract with the current school bus contractor provided the negotiated contract costs do not exceed by more than five per cent (5%) per year the basic costs of the previous year's contract and provided the duration of the negotiated contract is no longer than the duration of the previous contract. Such a negotiated contract can be entered into only at a public meeting of the trustees at which meeting the patrons of the district may appear and be heard. Notice of the meeting must have been published in a newspaper of wide circulation within the district at least one week prior to the meeting.

The provisions of this section for awarding a contract for school bus transportation shall be subject to the provisions of section 75-6808.

The trustees shall not expend any moneys of the district for school bus transportation by a private party or for individual transportation unless:

(1) to (3). * * * [Same as parent volume.]

History: En. 75-7013 by Sec. 290, Ch. 5, L. 1971; amd. Sec. 1, Ch. 362, L. 1973.

matter as the first paragraph (2); and made minor changes in style.

Amendments

The 1973 amendment divided the first two sentences of the former first paragraph into the preliminary paragraph and its subsidiary paragraph (1); inserted new

Effective Date

Section 2 of Ch. 362, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 19, 1973.

75-7019. Schedule of maximum reimbursement for individual transportation including provisions for isolation, room and board, and supervised study programs. The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of sections 75-7022 and 75-7023. These rates also shall constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian on the basis of the following schedule:

(1). * * * [Same as parent volume.]

(2) When the parent or guardian provides the transportation conveyance from the eligible transportee's residence to an approved route of the school bus designated by the trustees for the transportation of such eligible transportee, the per diem rates prescribed in subsection (1) shall be used to determine the reimbursable amount for such transportation on the basis of the distance from the child's residence to an established bus route stop. When the distance from the eligible transportee's residence to the approved bus route stop is not less than one and one-half ($1\frac{1}{2}$) miles but less than three (3) miles, the reimbursement rate shall be one-half ($\frac{1}{2}$) the rate prescribed in subsection (1)(a) above. No transportation reimbursement shall be paid to a parent or guardian when the distance from the child's residence is less than one and one-half ($1\frac{1}{2}$) miles from an established bus route stop.

(3) Where, due to excessive distances, impassable roads or other special circumstances of isolation, the rates prescribed in subsections (1) or (2) would be an inadequate reimbursement for the transportation costs or

would result in a physical hardship for the eligible transportee, his parent or guardian may request an increase in the reimbursement rate. Such a request for increased rates due to isolation shall be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances which exist to justify the increase. Before any increase rate due to isolation can be paid to the requesting parent or guardian, such rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the county transportation committee and the superintendent of public instruction, the trustees shall pay such increased rate due to isolation. The percentage increases of the per-day individual transportation rates prescribed in subsections (1) and (2) in relation to the degree of isolation, except that such increases shall not exceed one hundred per cent (100%).

(4) to (6). * * * [Same as parent volume.]

History: En. 75-7019 by Sec. 296, Ch. 5, L. 1971; amd. Sec. 1, Ch. 169, L. 1973; amd. Sec. 3, Ch. 416, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 169 and once by Ch. 416. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 169, Laws of 1973, substituted "an established bus route stop" for "such bus route" in the first sentence in subdivision (2); inserted "from the child's residence" following "distance" in the last sentence of subdivision (2); added "from established bus stop" to the end of that sentence; and made minor changes in style.

Chapter 416, Laws of 1973, deleted "The board of education shall promulgate a schedule that allows varying" from the beginning of the fifth sentence of subdivision (3).

CHAPTER 71—SCHOOL DISTRICT AND COUNTY SCHOOL BONDS

Section

- 75-7102. Definition of school district for bonding purposes.
- 75-7103. Trustees may issue bonds for certain purposes.
- 75-7104. Limitations on amount of bond issue.
- 75-7107. Limitation of term and interest on bonds, and timing for redemption of bonds.
- 75-7116. Notice of bond election by separate purpose.
- 75-7121. Sale of school district bonds.

75-7102. Definition of school district for bonding purposes. For the purposes of inebting an elementary district, a high school district, or a community college district by the issuance of bonds under the provisions of this title, the term "school district" shall mean any elementary district, high school district, or community college district, except the following types of high schools recognized as high school districts without a bonding authority in section 75-6501:

(1) and (2). * * * [Same as parent volume.]

History: En. 75-7102 by Sec. 303, Ch. 5, L. 1971; amd. Sec. 1, Ch. 419, L. 1973.

Amendments

The 1973 amendment inserted references to community college districts twice in the preliminary paragraph.

75-7103. Trustees may issue bonds for certain purposes. The trustees of a school district may issue and negotiate bonds on the credit of the school district for the purpose of:

(1) building, altering, repairing, buying, furnishing, equipping, purchasing lands for, and/or obtaining a water supply for, a school, teacherage, dormitory, gymnasium, other building, or combination of said buildings for school purposes including post-secondary vocational-technical centers in the school district;

(2) buying a school bus or buses;

(3) providing the necessary money to redeem matured bonds, maturing bonds, or coupons appurtenant to bonds when there is not sufficient money to redeem them;

(4) providing the necessary money to redeem optional or redeemable bonds when it is for the best interest of the school district to issue refunding bonds; or

(5) funding a judgment against the district.

Any money realized from the sale of any bonds issued on the credit of a high school district shall not be used for any of the above purposes in an elementary school district, and such money may be used for any of the above purposes for a junior high school but only to the extent that the ninth grade of the high school is served thereby.

History: En. 75-7103 by Sec. 304, Ch. 5, L. 1971; amd. Sec. 1, Ch. 76, L. 1973; amd. Sec. 1, Ch. 189, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 76 and once by Ch. 189. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 76, Laws of 1973, inserted "purchasing lands for, and/or obtaining a

water supply for" and "or combination of said buildings" in subsection (1); deleted former subsections (2) and (3); renumbered former subsection (4) as (2) and added "or buses" to that subsection; and renumbered former subsections (5), (6) and (7) as (3), (4) and (5).

Chapter 189, Laws of 1973, inserted "including post-secondary vocational-technical centers" in subdivision (1).

Effective Date

Section 2 of Ch. 76, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 3, 1973.

75-7104. Limitations on amount of bond issue. (1) The maximum amount for which each school district shall become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is five per cent (5%) of the assessed value of the taxable property therein as ascertained by the last completed assessment for state, county, and school taxes previous to the incurring of such indebtedness. All bonds issued in excess of such amount shall be null and void, except as provided in subsection (2).

When the total indebtedness of a school district has reached the five per cent (5%) limitation prescribed in this section, such school district shall have the power and authority to pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this title.

Whenever bonds are issued for the purpose of refunding bonds, any moneys to the credit of the debt service fund for the payment of the bonds to be refunded shall be applied towards the payment of such bonds and the refunding bond issue shall be decreased accordingly.

(2) In the case of a school district within which a new major industrial facility which seeks to qualify for taxation as class seven (7) property under section 84-301, R. C. M. 1947, is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class seven (7) property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the five per cent (5%) limitation prescribed in subsection one (1). Under such an agreement, the school district may, with the approval of the voters, issue bonds which exceed the limitation prescribed in subsection one (1) by a maximum of five per cent (5%) of the estimated assessed value of the taxable property of the new major industrial facility when completed. The estimated assessed value of the taxable property of the new major industrial facility shall be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district, and copy of the department's statement of estimated assessed value shall be printed on each ballot used to vote on a bond issue proposed under this subsection.

Pursuant to the agreement between the new major industrial facility and the school district, and as a precondition to qualifying as class seven (7) property, the new major industrial facility and its owners shall, in addition to such taxes as may be imposed by the school district on property owners generally pay so much of the principal and interests on the bonds provided for under this subsection as shall represent payment on an indebtedness in excess of the limitation prescribed in subsection one (1). After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in subsection one (1), the new major industrial facility shall be entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than twenty (20) years which credit shall, as a total amount, be equal to the amount by which the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

A major industrial facility is a facility, subject to the taxing power of the school district, whose construction or operation will increase the population of the district so as to impose a significant burden upon the resources of the district and to require construction of new school facilities. A significant burden is an increase in ANB of at least twenty per cent (20%) in a single year.

History: En. 75-7104 by Sec. 305, Ch. 5, L. 1971; amd. Sec. 3, Ch. 33, L. 1973; amd. Sec. 32, Ch. 100, L. 1973; amd. Sec. 1, Ch. 353, L. 1974.

Amendments

Both 1973 amendments deleted from the first paragraph of subsection (1) a sen-

tence defining the words "value of taxable property therein."

The 1974 amendment inserted the subsection designation (1); added "except as provided in subsection (2)" at the end of the first paragraph in subsection (1); and added subsection (2).

75-7107. Limitation of term and interest on bonds, and timing for redemption of bonds. School district bonds shall not be issued for a term longer than twenty (20) years except that bonds issued to refund or redeem outstanding bonds shall not be issued for a term longer than ten (10) years unless the unexpired term of the bonds to be refunded or redeemed is in excess of ten (10) years in which case the refunding or redeeming bonds may be issued for such unexpired term. All bonds issued for a longer term than five (5) years shall be redeemable at the option of the school district on any interest payment date after one-half ($\frac{1}{2}$) of the term for which they were issued has expired and it shall be so stated on the face of the bonds. The interest shall not exceed seven per cent (7%) per annum and shall be payable semiannually.

History: En. 75-7107 by Sec. 308, Ch. 5, L. 1971; amd. Sec. 7, Ch. 234, L. 1971; amd. Sec. 3, Ch. 284, L. 1973.

one-half ($\frac{1}{2}$) of the term for which they were issued has expired" in the second sentence for "five (5) years from the date of issue"; and made minor changes in phraseology.

Amendments

The 1973 amendment substituted "after

75-7116. Notice of bond election by separate purpose. Any school district bond election shall be conducted in accordance with the school election provisions of this Title except that the election notice required therein shall be in substantially the following form:

NOTICE OF SCHOOL DISTRICT BOND ELECTION

Notice is hereby given by the trustees of School District No. _____ of _____ County, state of Montana, that pursuant to a certain resolution duly adopted at a meeting of the board of trustees of said school district held on the _____ day of _____, A.D., 19____, an election of the registered electors of School District No. _____ of _____ County, state of Montana, will be held on the _____ day of _____, A.D., 19____, at _____ for the purpose of voting upon the question of whether or not the trustees shall be authorized to issue and sell bonds of said school district in the amount of _____ dollars (\$_____), bearing interest at a rate not more than seven per cent (7%) per annum, payable semiannually, for the purpose of _____ (here state purpose). The bonds to be issued will be either amortization or serial bonds, and amortization bonds will be the first choice of the board of trustees. The bonds to be issued, whether amortization or serial bonds, will be payable in installments over a period not exceeding _____ (state number) years.

The polls will be open from _____ o'clock _____m. and until _____ o'clock _____m. of the said day.

Dated and posted this _____ day of _____, A.D., 19____.

Chairman of School District No.

_____ of _____ County,
State of Montana

If the bonds proposed to be issued are for more than one purpose, then each purpose shall be separately stated in the notice together with the proposed amount of bonds therefor.

History: En. 75-7116 by Sec. 317, Ch. 5, L. 1971; amd. Sec. 40, Ch. 234, L. 1971; amd. Sec. 1, Ch. 176, L. 1973.

Amendments

The 1973 amendment deleted "who are taxpayers therein and whose names appear

on the last completed assessment roll for state, county and school district taxes prior to the holding of such election," from the notice following "registered electors of School District No. ----- of ----- County, state of Montana."

75-7121. Sale of school district bonds. (1) The trustees shall meet at the time and place fixed in the notice to consider bids on the bond issue. The bonds shall be sold at not less than par and accrued interest and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in considering bids on these classes of bonds, the trustees shall take into consideration not only the rate of interest demanded on each kind, but also every other known element affecting the total cost of the bonds to the district when paid in full. The trustees shall accept the bid which they shall judge most advantageous to the school district. No attorney fees, brokerage or other fees, or commissions of any kind shall be paid to any person or corporation for assisting in the proceedings or in the preparation of the bonds, or in negotiating the sale. The trustees are authorized to reject any or all bids and to sell the bonds at private sale if they deem it for the best interests of the school district except that such bonds shall not be sold at less than par and accrued interest.

(2) The trustees may co-operate and combine with other school districts within the same county for the purpose of preparing and negotiating for sale of bond issues, if in the opinion of the trustees such co-operation or combination will facilitate the sale of school district bonds under more advantageous terms or with lower interest rates. Provided, however, that bond issues prepared or negotiated for sale under this section shall not be combined for any other purpose, but shall be entered separately on the books of the county treasurer and shall be otherwise treated as separate bond issues.

History: En. 75-7121 by Sec. 322, Ch. 5, L. 1971; amd. Sec. 10, Ch. 234, L. 1971; amd. Sec. 1, Ch. 66, L. 1974.

Amendments

The 1974 amendment inserted subsection designation (1) and added subsection (2).

CHAPTER 72—ELEMENTARY TUITION AND SPECIAL PURPOSE FUNDS

Section

75-7201. Elementary tuition rates.

75-7202. End of term tuition report and notification of resident elementary district.

75-7204. Retirement fund.

75-7214. Housing and dormitory fund.

75-7201. Elementary tuition rates. Whenever a pupil of an elementary district has been granted approval to attend a school outside of the district in which he resides, under the provisions of section 75-6313 or 75-6314, such district shall pay tuition to the elementary district where the pupil attends school on the basis of the rate of tuition determined by the attended district. The rate of tuition shall be determined by:

(1) totaling the actual expenditures from the district general fund, retirement fund and debt service fund;

(2) dividing the amount determined in subsection (1) above by the ANB of the district for the current fiscal year, as determined under the provisions of section 75-6902; and

(3) subtracting the total of the per ANB amount allowed by section 75-6905 that represents the foundation program as prescribed by section 75-6906 plus the per ANB amount determined by dividing the state financing of the district permissive levy by the ANB of the district, from the amount determined in subsection (2) above.

History: En. 75-7201 by Sec. 340, Ch. 5, L. 1971; amd. Sec. 2, Ch. 251, L. 1974.

to repeal the elementary school tuition schedule and to establish the annual calculation of a district's tuition rate on the basis of actual expenditures.

Amendment

The 1974 amendment rewrote this section

75-7202. End of term tuition report and notification of resident elementary district. At the close of the school term of each school fiscal year and before the fifteenth (15th) day of July, the trustees of each elementary district shall report to the county superintendent:

(1) * * * [Same as parent volume.]

(2) the number of days of school attended by each pupil;

(3) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, may waive. Any waiver of tuition shall be applied equally to all pupils; and

(4) the rate of the current school fiscal year tuition, as determined under the provisions of section 75-7201.

When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the county superintendent of each county in which the reported pupils reside. In turn, every county superintendent shall notify each elementary district of his county of the tuition amounts owed to other elementary districts of the county or outside of the county. Such amounts shall be established from the tuition rate and other information reported by the district in which the pupil attended school. No tuition shall be due when a pupil attends less than forty (40) days of school in such district.

History: En. 75-7202 by Sec. 341, Ch. 5, L. 1971; amd. Sec. 3, Ch. 251, L. 1974.

rate and other information reported" for "from the tuition rate stated in each pupil's tuition agreement and from the information reported" in the next to last sentence in the final paragraph.

Amendments

The 1974 amendment inserted subdivision (4) and substituted "from the tuition

75-7204. Retirement fund. The trustees of any district employing personnel who are members of the teachers retirement system or the public employees retirement system, or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to such systems. The district's contribution for each employee who is a member of the teachers retirement system shall be calculated in accordance with section 75-6207. The district's contribution for each employee who is a member of the public employees retirement system shall

be calculated in accordance with section 68-603, R.C.M., 1947. The district's contributions for each employee covered by any federal social security system shall be paid in accordance with federal law and regulation.

The trustees of any district required to make a contribution to any such system shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution and such additional moneys, within legal limitations, as they may wish to provide for the retirement fund cash reserve. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to such systems in accordance with the financial administration provisions of this title.

When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(1) and (2). * * * [Same as parent volume.]

The county superintendent shall total the net retirement fund levy requirements separately for all elementary school districts and all high school districts of the county, including any prorated joint district levy requirements, and shall report each such levy requirement to the county commissioners on the second Monday of August as the respective county levy requirements for elementary district and high school district retirement funds. The county commissioners shall fix and set such county levy in accordance with section 75-6717.

The net retirement fund levy requirement for a joint elementary district or a joint high school district shall be prorated to each county in which a part of such district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each such county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in section 75-6721.

History: En. 75-7204 by Sec. 343, Ch. 5, L. 1971; amd. Sec. 1, Ch. 281, L. 1973.

Compiler's Notes

Section 68-603 cited in the first paragraph was repealed. See sec. 68-2504.

Amendments

The 1973 amendment inserted "or who are covered by any federal social security system requiring employer contributions" in the first sentence of the first paragraph; added the fourth sentence to the first paragraph; deleted, immediately after paragraph (2), a paragraph providing for annual report to and levy by the county

commissioners of elementary district requirements; inserted "separately for all elementary school districts" in the first sentence of the next to last paragraph; substituted "joint district" for "joint high school district" before "levy requirements" in the same sentence; inserted "for elementary district and" near the end of the same sentence; inserted "a joint elementary district or" before "a joint high school district" near the beginning of the final paragraph; substituted "district ANB of the joint district" in the final paragraph for "high school ANB of the joint high school district"; and made minor changes in phraseology.

75-7214. Housing and dormitory fund. The trustees of any district that provides pupil or teacher housing in district-owned buildings under a lease or rental agreement with pupils or teachers or receives moneys under the provision of section 75-8211 shall establish a housing and dormitory fund. All moneys received from such lease or rental agreements shall be deposited with the county treasurer to the credit of the housing and dormitory fund, general fund, or the debt service fund. Whenever the end-of-the-year cash balance of the housing and dormitory fund is more than three

thousand dollars (\$3,000), such cash balance in excess of three thousand dollars (\$3,000) shall be transferred to the general fund of the district.

Any expenditure of moneys from the housing and dormitory fund shall be made for the maintenance and operation of the district-owned buildings to which the lease or rental agreements apply or for the acquisition of additional housing or dormitory facilities. The financial administration of the housing and dormitory fund shall be in accordance with the financial administration provisions of this title for a nonbudgeted fund.

History: En. 75-7214 by Sec. 353, Ch. 5, L. 1971; amd. Sec. 1, Ch. 88, L. 1973.

ceives moneys under the provision of section 75-8211" in the first sentence of the first paragraph.

Amendments

The 1973 amendment inserted "or re-

CHAPTER 73—PUBLIC SCHOOL FUND, EDUCATIONAL CO-OPERATIVE AGREEMENTS AND GRANTS TO SCHOOLS

Section

75-7303. Acceptance and expenditure of federal moneys for state.

75-7303. Acceptance and expenditure of federal moneys for state. The governor and the superintendent of public instruction are authorized on behalf of the state of Montana to request and accept such moneys as are now or will be made available under any act of Congress of the United States, or otherwise, for purposes of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Such moneys shall be deposited by the governor and superintendent of public instruction in the state treasury, and are appropriated and made available to the superintendent of public instruction. All such moneys shall be expended for the purpose of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. The governor and superintendent of public instruction are further authorized on behalf of the state of Montana to accept moneys provided from federal sources for the express purpose of distribution to nonpublic education. Such moneys shall be deposited by the governor and superintendent of public instruction in the state treasury, and are appropriated and made available to the superintendent of public instruction. All such moneys shall be distributed in the manner provided by the laws of the state of Montana and as authorized or expressed by grants from the federal government. All expenditures of moneys from federal sources under this section shall be made under the supervision and in the discretion of the superintendent of public instruction. Any balance in the account in which such moneys are maintained shall not lapse at any time, but shall be continuously available to the superintendent of public instruction for expenditures consistent with this act and acts of the federal government.

History: En. 75-7303 by Sec. 358, Ch. 5, L. 1971; amd. Sec. 1, Ch. 34, L. 1973.

urer" in the second sentence; inserted the fourth, fifth and sixth sentences; inserted "of moneys from federal sources under this section" near the beginning of the seventh sentence; and made minor changes in phraseology.

Amendments

The 1973 amendment substituted "in the state treasury" for "with the state treas-

CHAPTER 74—SCHOOL TERMS AND HOLIDAYS

Section

- 75-7402. School fiscal year.
 75-7403. School day and week.
 75-7406. School holidays.

75-7402. School fiscal year. The school fiscal year shall begin on the first day of July and end on the last day of June. At least one hundred eighty (180) school days of pupil instruction shall be conducted during each school fiscal year, unless a variance for kindergarten has been granted under section 75-7403. Any district that fails to provide for at least one hundred eighty (180) school days of pupil instruction shall not be entitled to receive any apportionment of the state interest and income funds. Any such forfeited moneys shall be apportioned by the county superintendent to the other elementary districts of his county.

History: En. 75-7402 by Sec. 366, Ch. 5, L. 1971; amd. Sec. 2, Ch. 373, L. 1974. variance for kindergarten has been granted under section 75-7403" at the end of the second sentence.

Amendments

The 1974 amendment added "unless a

75-7403. School day and week. A school day of pupil instruction shall be at least two (2) hours for kindergartens and all other preschool programs, unless a variance has been granted by the superintendent of public instruction in accordance with the policies of the board of public education, at least four (4) hours for grades one (1) through three (3), and at least six (6) hours for grades four (4) through twelve (12). The number of hours in any one school day for grades four (4) through twelve (12) may be reduced by one (1) hour if the total number of hours in the school week is not less than thirty (30) hours. The number of hours in a school week may be reduced, in an emergency, with the approval of the board of public education.

History: En. 75-7403 by Sec. 367, Ch. 5, L. 1971; amd. Sec. 1, Ch. 417, L. 1973; amd. Sec. 3, Ch. 373, L. 1974.

Amendments

The 1973 amendment inserted the second sentence; and substituted "week" for "day" in the third sentence.

The 1974 amendment inserted "unless a variance has been granted by the superintendent of public instruction in accordance with the policies of the board of public education" in the first sentence and substituted "board of public education" for "board of education" at the end of the third sentence.

75-7406. School holidays. Pupil instruction and pupil-instruction-related days shall not be conducted on the following holidays:

(1) to (4) * * * [Same as parent volume.]

(5) Thanksgiving day (fourth Thursday in November),

(6) Christmas day (December 25),

(7) State and national election days when the school building is used as a polling place and the conduct of school would interfere with the election process at the polling place. When these holidays fall on Saturday or Sunday, the preceding Friday or the succeeding Monday shall not be a school holiday.

History: En. 75-7406 by Sec. 370, Ch. 5, L. 1971; amd. Sec. 1, Ch. 159, L. 1974.

Amendments

The 1974 amendment deleted Veterans' Day as a school holiday.

CHAPTER 75—SCHOOL ACCREDITATION, CURRICULUM AND ADULT EDUCATION

Section

- 75-7502. Accreditation of schools.
 75-7504. Instruction in middle schools, junior high schools and high schools.
 75-7507. Five-year-old schooling and preschool programs.
 75-7511. State visual, aural and other educational media library.

75-7501. Standards of accreditation.**Cross-References**

Board of public education to exercise

powers and duties of board of education,
sec. 75-5617 (1).

75-7502. Accreditation of schools. Every school year the conditions under which each elementary school, middle school, junior high school, and high school operates shall be reviewed by the superintendent of public instruction to determine each school's compliance with the standards of accreditation. The accreditation status of every school shall then be established by the board of public education upon the recommendation of the superintendent of public instruction, and notification of such status for the applicable school year shall be given to each district.

History: En. 75-7502 by Sec. 373, Ch. 5, L. 1971; amd. Sec. 4, Ch. 352, L. 1974.

school" after "elementary school" in the first sentence and substituted "board of public education" for "board of education" in the second sentence.

Amendments

The 1974 amendment inserted "middle

75-7504. Instruction in middle schools, junior high schools and high schools. All middle schools, junior high schools and high schools shall be taught in the English language. Instruction shall be given in accordance with the requirements of the standards of accreditation adopted by the board of public education. Such standards shall require instruction in English, American history, American government, mathematics, science, health and physical education. Instruction may be given in additional subjects when approved by the trustees.

History: En. 75-7504 by Sec. 375, Ch. 5, L. 1971; amd. Sec. 5, Ch. 352, L. 1974.

schools" in the caption and in the first sentence and substituted "board of public education" for "board of education" at the end of the second sentence.

Amendments

The 1974 amendment inserted "middle

75-7507. Five-year-old schooling and preschool programs. (1) The trustees of an elementary district may establish a program capable of accommodating, at a minimum, all the children in the district who will be five (5) years old on or before the first grade enrollment closing date established by the district trustees for the school year for which the program is to be conducted. The program shall be an integral part of the elementary school and shall be financed and governed accordingly, provided that to be eligible for inclusion in the calculation of ANB pursuant to section 75-6902, a child must have reached the age of five (5) on or before the first grade enrollment closing date established by the district trustees for the school year covered by the calculation.

(2) The trustees of an elementary school district may establish and operate a free preschool program for children between the ages of three (3)

and five (5) years. When such preschool programs are established, they shall be an integral part of the elementary school and shall be governed accordingly. Financing of preschool programs shall not be supported by moneys available from state equalization aid.

History: En. 75-7507 by Sec. 378, Ch. 5, L. 1971; amd. Sec. 3, Ch. 345, L. 1973.

deleted references to kindergarten before the references to preschool programs in all three sentences of subsection (2); and reduced the maximum age specified at the end of the first sentence of subsection (2) from six to five years.

Amendments

The 1973 amendment inserted a new subsection (1); designated the language in the former section as subsection (2);

75-7509. Conservation education.

Cross-References

powers and duties of board of education, sec. 75-5617 (1).

Board of public education to exercise

75-7511. State visual, aural and other educational media library. A library of visual, aural and other educational media shall be established and maintained by the superintendent of public instruction. The media shall be selected by the superintendent of public instruction, on the basis of their usefulness as teaching aids and resources for schools and other educational groups within the state, and shall be made available to such schools and groups on a rental fee basis. The rental fees for the use of the materials in the library shall be set by the superintendent of public instruction and shall be deposited in a media library revolving fund. The superintendent of public instruction may use these funds, as well as any other funds advanced by a legislative appropriation to the library media revolving fund, for the operation, maintenance, enlargement and other related costs of the library.

History: En. 75-7511 by Sec. 382, Ch. 5, L. 1971; amd. Sec. 1, Ch. 193, L. 1974.

after "superintendent of public instruction" in the second sentence; deleted "either on a charge-free loan or" before "on a rental fee basis" in the second sentence; and added the third sentence.

Amendments

The 1974 amendment deleted "subject to the approval of the board of education"

75-7517. School library required.

Cross-References

powers and duties of board of education, sec. 75-5617 (1).

Board of public education to exercise

75-7520. Reporting school library information.

Cross-References

powers and duties of board of education, sec. 75-5617 (1).

Board of public education to exercise

CHAPTER 76—TEXTBOOKS

Section

75-7604. Textbooks obtained from licensed textbook dealer.

75-7605. Licensing textbook dealers.

75-7607. Notification and processing of complaint against a licensed textbook dealer.

75-7604. Textbooks obtained from licensed textbook dealer. Textbooks selected and adopted by districts shall be obtained from a licensed textbook dealer.

History: En. 75-7604 by Sec. 396, Ch. 5, L. 1971; amd. Sec. 1, Ch. 89, L. 1973.

sentence requiring filing of copies in the textbook library maintained by the superintendent of public instruction.

Amendments

The 1973 amendment deleted a second

75-7605. Licensing textbook dealers. Textbook dealers shall be licensed to sell textbooks by the superintendent of public instruction. To obtain a license a textbook dealer shall first file with the superintendent of public instruction his written agreement:

(1) to guarantee that textbooks shall be supplied to any district at the listed, uniform sales prices in effect for schools; except, that such prices may be reduced in accordance with this section;

(2) to guarantee that, at no time, shall any textbook sale price in Montana be a larger amount than the sale price to schools anywhere else in the United States under similar conditions of transportation and marketing; and

(3) to reduce automatically the listed, uniform sales price to schools whenever reductions of these prices are made anywhere in the United States.

Textbook dealers filing the written agreement with the superintendent of public instruction shall also file a surety bond with the secretary of state. The surety bond shall run to the state of Montana and be conditioned on the faithful performance of all duties imposed upon textbook dealers for the purpose of regulating the supply of textbooks to districts. The amount of the surety bond shall be set by the superintendent of public instruction and shall be not less than two thousand dollars (\$2,000) but not more than ten thousand dollars (\$10,000). The bond shall be approved by the attorney general. It shall be the responsibility of the textbook dealer to maintain the surety bond on a current basis.

When the textbook dealer has complied with the written agreement and surety bond requirements for licensing, the superintendent of public instruction shall issue a license to the textbook dealer.

History: En. 75-7605 by Sec. 397, Ch. 5, L. 1971; amd. Sec. 2, Ch. 89, L. 1973.

textbooks offered with the superintendent of public instruction; renumbered the succeeding subdivisions accordingly; and deleted "when the textbooks are filed" preceding the semicolon in subdivision (1).

Amendments

The 1973 amendment deleted former subdivision (1) requiring the filing of all

75-7606. Repealed.

Repeal

Section 75-7606 (Sec. 398, Ch. 5, L. 1971), requiring licensed textbook dealers to file copies of books offered for sale

with the superintendent of public instruction, was repealed by Sec. 4, Ch. 89, Laws 1973.

75-7607. Notification and processing of complaint against a licensed textbook dealer. It shall be the duty of any district or county superintendent to notify the superintendent of public instruction whenever it is ascertained that a licensed textbook dealer is:

(1) offering to supply textbooks without a license as prescribed in section 75-7605;

- (2). * * * [Same as parent volume.]
- (3) offering to sell textbooks at a higher shipping point price than the shipping point price of the same textbooks distributed elsewhere in the United States; or
- (4) in any other way, performing contrary to the laws regulating the offering of textbooks for sale or adoption to districts.

Upon receipt of such notification from the district or county superintendent, the superintendent of public instruction shall notify the appropriate licensed textbook dealer of the complaint. Once the superintendent of public instruction has found that the licensed textbook dealer has violated any provision of this section and he fails to rectify his error within thirty (30) days of the notification of the finding of a violation, he shall forfeit his surety bond. The attorney general, upon written request of the superintendent of public instruction, shall proceed to collect by legal action the full amount of the surety bond. Any amount so recovered shall be paid into the state public school equalization aid account.

History: En. 75-7607 by Sec. 399, Ch. 5, L. 1971; amd. Sec. 3, Ch. 89, L. 1973.

Amendments

The 1973 amendment substituted "without a license as prescribed in section 75-7605" for "not filed with the superintendent of public instruction" in subdivision (1); deleted former subdivision (4), relating to books inferior to the sample filed with the superintendent; renumbered former subdivision (5) as (4); and made a minor change in style.

Repealing Clause

Section 4 of Ch. 89, Laws 1973 read "Sections 75-7606 and 75-7611, R. C. M. 1947, are repealed."

75-7611. Repealed.

Repeal

Section 75-7611 (Sec. 403, Ch. 5, L. 1971), requiring the superintendent of public instruction to supply a list of textbooks on file with him to all district and county superintendents, was repealed by Sec. 4, Ch. 89, Laws 1973.

CHAPTER 77—VOCATIONAL AND TECHNICAL EDUCATION

Section

75-7709. Sources of financing for post-secondary vocational-technical center budgets—board of public education administration.

75-7702. Duties of board of education.

Compiler's Notes

Executive Reorganization Order 5-72, signed by the governor and effective Sept. 15, 1972, established a vocational education advisory council for purposes of this chapter.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7707. Post-secondary vocational-technical center designation.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7708. Program and budget categories, etc.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7709. Sources of financing for post-secondary vocational-technical center budgets—board of public education administration. The total of the budgets approved by the board of public education together with the budget for the cost of state administration of the post-secondary vocational-technical centers shall constitute the total maximum approved, state-wide budget which shall be financed as follows:

(1) and (2). * * * [Same as parent volume.]

(3) Designated post-secondary vocational-technical centers shall be eligible to receive such funds from the federal government as the board of public education may provide pursuant to applicable acts of Congress.

(4) The board of trustees of any designated high school district, or county high school district where a post-secondary vocational center is located may be required, as a condition for the construction in such district of a post-secondary vocational center, or any part thereof, to furnish up to fifty per cent (50%) of the amount of funds required for any such construction. The percentage of construction funds to be furnished by such designated district shall be derived, in whole or in part, from any of the following sources:

(a) The sale of bonds issued by such district. Such bonds shall be issued in conformity with the requirements of chapter 71 of Title 75 in the case of high school and county high school district.

(b) Any other funds available to such district which may be legally and properly applied toward such construction.

(c) The reasonable value of land, buildings, fixtures or equipment furnished by such district, subject to the approval of the board of public education.

(5) If the aggregate financing provided by sources of revenue in (1), (2) and (3) does not provide one hundred per cent (100%) financing of the maximum approved, state-wide budget, the remaining deficiency shall be financed from any state funds appropriated by the legislature for post-secondary vocational-technical education.

The board of public education shall direct the distribution of the funds specified in subsections (1), (3), and (5) of this section on the basis of the budgets approved by the board of public education. The funds earned by the mill levy specified in subsection (2) of this section shall be credited by the county treasurer to the post-secondary vocational-technical center fund.

The board of public education shall determine the amount of financing available from these five sources of revenue and may approve budgets for maintenance and operation, construction and ancillary services. The aggregate amount of the budgets so approved by the board of public education for post-secondary vocational-technical centers shall not exceed the moneys determined to be available.

History: En. 75-7709 by Sec. 412, Ch. 5, L. 1971; amd. Sec. 1, Ch. 226, L. 1973.

Amendments

The 1973 amendment inserted "public" in the name of the board throughout the section; inserted subdivision (4); renun-

bered former subdivision (4) as (5); inserted "in (1), (2) and (3)" in subdivision (5); substituted "five" for "four" before "sources of revenue" in the first sentence of the final paragraph; and made minor changes in phraseology.

75-7710. Local administration.**Cross-References**

powers and duties of board of education,
sec. 75-5617 (1).

Board of public education to exercise

75-7713. Waiver of tuition, etc.**Cross-References**

powers and duties of board of education,
sec. 75-5617 (1).

Board of public education to exercise

75-7714. Pupil fees and disposition of collected fees.**Cross-References**

powers and duties of board of education,
sec. 75-5617 (1).

Board of public education to exercise

75-7715. Lease or purchase of state property, etc.**Cross-References**

powers and duties of board of education,
sec. 75-5617 (1).

Board of public education to exercise

CHAPTER 78—SPECIAL EDUCATION FOR EXCEPTIONAL CHILDREN**Section**

75-7801. Definitions.

75-7805. Mandatory establishment of special education program.

75-7806. Discretionary establishment of special education program.

75-7807. Petition of parents for establishment of special education program.

75-7810. No tuition when attending a state institution.

75-7813.1. Allowable cost schedule for special programs—the superintendent of public instruction to make rules—annual accounting.

75-7801. Definitions. As used in this title, unless the context clearly indicates otherwise:

“Special education” means the kind of instruction requiring special facilities or programs for mentally retarded or physically handicapped children or for educationally handicapped persons.

A “mentally retarded child” means any child who is not capable of profiting from the regular instruction of a school because his mental ability is substantially below the mental ability of an average child of the same age. Mentally retarded children are classified as follows:

(a) to (c) * * * [Same as parent volume.]

A “physically handicapped child” means a child who is capable of profiting from the regular instruction with the assistance of special equipment, special services, or transportation to compensate for physical disabilities such as, but not limited to, cardiac impairment, cerebral palsy, chronic health problems, or inadequate speech, hearing or vision.

An “educationally handicapped person” means a child or young adult under the age of twenty-one (21) years who requires special assistance to the extent that he cannot reasonably profit from the regular education program.

An educationally handicapped person’s learning disorders include, but are not limited to, conditions which have been referred to as visual perception handicaps, brain injury, minimal brain dysfunction, dyslexia, behavioral maladjustment and emotional disturbances. An educationally handicapped person’s disorders are not the result of problems with visual acuity, hearing impairment, physical handicaps, cultural or instructional factors, and mental retardation.

History: En. 75-7801 by Sec. 419, Ch. 5, L. 1971; amd. Sec. 1, Ch. 93, L. 1974.

Amendments

The 1974 amendment substituted "kind" for "type" near the beginning of the defi-

nition of "special education"; added "or for educationally handicapped persons" at the end of the same definition; and added the definition of an "educationally handicapped person" at the end of the section.

75-7802. Conduct of special education, etc.

Cross-References

Board of public education to exercise

powers and duties of board of education, sec. 75-5617 (1).

75-7805. Mandatory establishment of special education program. (1) The trustees of any district shall establish and maintain at least one applicable special education program when there are ten (10) or more educable mentally retarded children in the district and at least one (1) applicable special education program when there are seven (7) or more trainable mentally retarded children in the district, and at least one (1) applicable special education program when there are ten (10) or more physically handicapped children in the district.

After July 1, 1979, the board of trustees of every school district must provide or establish and maintain a special education program for every handicapped person as herein defined between the ages of six (6) and twenty-one (21) in the district who cannot benefit sufficiently from the regular programs of instruction by reason of his mental, physical, emotional or learning problems.

(2) The board of trustees of any school district may meet its obligation to serve handicapped persons by establishing its own special education program, by establishing a co-operative special education program, or by participating in a regional services program.

(3) Eligibility for enrollment in special education programs shall be determined under regulations of the superintendent of public instruction issued pursuant to policies adopted by the board of public education.

History: En. 75-7805 by Sec. 423, Ch. 5, L. 1971; amd. Sec. 1, Ch. 123, L. 1971; amd. Sec. 2, Ch. 93, L. 1974.

Amendments

The 1974 amendment inserted the sub-

section designation (1); substituted "program" for "class" throughout the first paragraph of subsection (1); added the second paragraph of subsection (1); and added subsections (2) and (3).

75-7806. Discretionary establishment of special education program. The trustees of any district may establish and maintain a special education program for:

(1) to (3) * * * [Same as parent volume.]

(4) four (4) or more educationally handicapped persons between the ages of six (6) and twenty-one (21);

(5) individual children requiring special education such as home or hospital tutoring, school-to-home telephone communication, or other individual programs; or

(6) educable mentally retarded children, trainable mentally retarded children, educationally handicapped children, or physically handicapped children under the age of six (6) years of age when the superintendent of public instruction has determined that such programs will:

(a) assist a child to achieve levels of competence that will enable him to participate in the regular instruction of the district when he could not participate without special education;

(b) permit the conservation or early acquisition of skills which will provide the child with an equal opportunity to participate in the regular instruction of the district; or

(c) provide other demonstrated educational advantages which will materially benefit the child; or

(7) educable mentally retarded persons, educationally handicapped persons, or physically handicapped persons who are not less than twenty-one (21) or more than twenty-five (25) years of age when the superintendent of public instruction has determined that such programs will assist a person to achieve levels of competence that will enable him to better participate in society;

(8) eligibility for enrollment in special education programs shall be determined under regulations of the superintendent of public instruction issued pursuant to policies adopted by the board of public education.

History: En. 75-7806 by Sec. 424, Ch. 5, L. 1971; amd. Sec. 1, Ch. 122, L. 1971; amd. Sec. 2, Ch. 123, L. 1971; amd. Sec. 3, Ch. 93, L. 1974.

Amendments

The 1974 amendment deleted "special

education class" before "or special education program" near the beginning of the section; inserted subdivision (4) and re-numbered subsequent subdivisions accordingly; inserted "educationally handicapped children" in subdivisions (6) and (7); and added subdivision (8).

75-7807. Petition of parents for establishment of special education program. The parents of four (4) or more persons requiring special education of the kind provided for educable mentally retarded children, trainable mentally retarded children, educationally handicapped persons or physically handicapped children may petition the board of trustees to establish a special education program. Parents residing in several districts may petition the board of trustees of each district to co-operatively establish a special education program of one kind for four (4) or more persons. The interlocal co-operative agreement authorized in chapter 49 of Title 16, R. C. M. 1947, may be used to establish a multi-district special education program.

History: En. 75-7807 by Sec. 425, Ch. 5, L. 1971; amd. Sec. 3, Ch. 123, L. 1971; amd. Sec. 4, Ch. 93, L. 1974.

Amendments

The 1974 amendment substituted "persons requiring" for "children needing" at the beginning of the section; substituted "the kind provided for" near the beginning of the section for "one type of"; inserted "educationally handicapped persons" after "mentally retarded children" near the middle of the section; inserted "board of"

before "trustees" throughout the section; deleted "class or" after "special education" at the end of the first sentence and throughout the remainder of the section; deleted "contiguous" before "districts" near the beginning of the second sentence; substituted "kind" for "type" near the end of the second sentence; substituted "persons" for "children" as the last word of the second sentence; substituted "may" for "shall" in the last sentence; and made minor changes in punctuation and phraseology.

75-7810. No tuition when attending a state institution. When a child is attending an institution supported solely by funds of the state of Montana, the resident district or county shall not be required to pay tuition to the state institution for such child, but whenever at the recommendation of

SPECIAL EDUCATION FOR EXCEPTIONAL CHILDREN 75-7813.1

institution officials such child attends classes conducted by a school within a local district, the district or county, whichever is applicable, wherein the parents or guardian of the child maintain legal residence shall pay tuition to the district or county operating the school in accordance with the provisions of section 75-7201 or section 75-7808, whichever section applies to the circumstances of the child. Transportation payments shall be made for students enrolled in such classes or receiving training, including summer sessions, at the state institution. The schedule of transportation payments shall be approved in accordance with existing special education transportation payment schedules and shall be approved by the county transportation committee and the superintendent of public instruction.

History: En. 75-7810 by Sec. 428, Ch. 5, L. 1971; amd. Sec. 1, Ch. 282, L. 1971; amd. Sec. 1, Ch. 45, L. 1973; amd. Sec. 7, Ch. 91, L. 1973.

conflict, the compiler has made a composite section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 45 and once by Ch. 91. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to

Amendments

Chapter 45, Laws of 1973, inserted "including summer sessions" in the second sentence.

Chapter 91, Laws of 1973, inserted "or county, whichever is applicable" in the first sentence.

75-7813. Repealed.

Repeal

Section 75-7813 (Sec. 431, Ch. 5, L. 1971), relating to financial assistance for

operation of a special education class or program, was repealed by Sec. 2, Ch. 344, Laws 1974.

75-7813.1. Allowable cost schedule for special programs—the superintendent of public instruction to make rules—annual accounting. (1) For the purpose of determining the maximum-budget-without-a-vote for special education as defined in sections 75-6905(20) and 75-6905(21), the following schedule of allowable costs shall be followed by the school district in preparation of its special education budget for state aid request purposes and by the superintendent of public instruction in his review and approval of the budget for the purposes of determining the amount of the maximum-budget-without-a-vote for special education for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with sections 75-6902 and 75-6903.

(a) Administration; salaries, benefits, supplies and other expenses of the superintendent's office, the office of the board of trustees, and the business office including:

(i) salaries of professional administrative personnel—a portion of the entire cost corresponding to the portion of entire working time which each such person devotes to the special program;

(ii) salaries of clerical personnel for administrative staff—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(iii) supplies and other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(b) Instruction; salaries, benefits, supplies, textbooks and other expenses including:

(i) salaries of principals and clerical personnel—a portion of the entire cost corresponding to the portion of the entire working time which each such person devotes to the special program but not to exceed one and seventy-five hundredths (1.75) times the amount budgeted per regular ANB for the current year;

(ii) salaries and benefits of special program teachers, regular program teachers, teacher aides, special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full-time in the special program. If such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(iii) teaching supplies and textbooks—if used exclusively for special programs the actual total cost. If shared with regular programs—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(iv) other expenses—with the exception of the following items, the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year:

(A) Contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by nonprofit agencies—the actual total cost.

(B) Transportation costs for special education personnel who must travel on an itinerant basis from school to school or district to district—the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes.

(c) Library services; salaries, books and periodicals and other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(d) Supportive services; salaries, benefits and other expenses:

(i) salaries and benefits of professional supportive personnel—the entire cost if employed full-time in the special program. If such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program.

Professional supportive personnel may include counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) salaries and benefits of clerical personnel for professional personnel in supportive services—the entire cost if employed full-time in the special program. If such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(iii) other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(e) Operation of plant; salaries, benefits, heat for buildings, utilities except heating, and other supplies and expenses—the superintendent of public instruction shall make regulations fixing a ratio for operation spending per full-time special pupil to such spending per current year's regular ANB. The proration shall be based on the ratio between the number of special pupils per class and the number of regular pupils per class and any other relevant factors.

(f) Maintenance of plant; salaries, benefits, replacements and parts, contracted services—the superintendent of public instruction shall make regulations fixing a ratio for maintenance spending per full-time special pupil to such spending per current year's regular ANB. The proration shall be based on the ratio between the number of special pupils per class and the number of regular pupils per class and any other relevant factors.

(g) School food services—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(h) Student body and auxiliary services; salaries and other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(i) Other current charges; insurance, rental of land and buildings, and other expenses:

(i) rental of land and buildings, when such premises meet all requirements of the board of public education and the department of health and environmental sciences—no such costs may be charged to the special program without specific authorization from the superintendent of public instruction unless the land and buildings are shared between the special and regular pupils, and the amount of the total cost that may be charged to the special program may not exceed whatever proportion the number of special full-time pupils are to the total enrollment of the school district of the previous year. Provided, however, that any school district renting land and buildings for special education purposes prior to the 1974-75 school year is not subject to this requirement, and will charge a portion of the total cost when shared with regular programs, to be prorated based on the amount of building space used by each type of program;

(ii) insurance—the superintendent of public instruction shall make regulations fixing a ratio for insurance spending per full-time special pupil to such spending per current year's regular ANB. The proration shall be based on the ratio between the number of special pupils per class and the number of regular pupils per class and any other relevant factors;

(iii) all other expenses—the amount allowed for budget purposes per full-time special pupil for a school year may not exceed the amount budgeted per regular ANB for the current school year.

(j) Capital outlay; sites, buildings, remodeling and improvements, equipment and other:

(i) classroom remodeling and improvements for a program for physically handicapped students—the actual total cost; all other remodeling and improvements—the amount allowed for budget purposes per full-time spe-

cial pupil for a school year may not exceed the amount budgeted per regular ANB for the current school year;

(ii) equipment—the actual total cost;

(iii) sites—buildings—no such costs may be charged to the special program unless the sites and/or buildings are shared between the special and regular students, and the amount of the total cost that may be charged to the special program may not exceed whatever proportion the number of special full-time pupils are to the total full-time enrollment of the school.

(iv) other—the amount allowed for budget purposes may not exceed the amount budgeted per regular ANB for the current year.

(k) Room and board costs when the special pupil has to attend a program at such a distance from his home that commuting is undesirable as determined by the superintendent of public instruction.

(2) The superintendent of public instruction shall, prior to the time when a district must have prepared its budget for the 1975-1976 year, promulgate rules and regulations, in accordance with the policies of the board of public education, for:

(a) keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs;

(b) defining the total special program caseload that shall be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(d) of this section;

(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(j)(ii) of this section; and

(d) prescribing formulas for calculating, the portion of operation and maintenance costs, insurance, building and rental costs properly allocable to the special programs, as prescribed by subsections (1)(e), (1)(f), (1)(i)(i), and (1)(i)(ii) of this section.

(3) An annual accounting of all expenditures of school district general fund moneys for special education shall be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for such accounting.

History: En. 75-7813.1 by Sec. 1, Ch. 344, L. 1974.

gram and requiring an annual accounting; and repealing section 75-7813, R. C. M. 1947.

Title of Act

An act enumerating the allowable costs of special education programs which a school district may count for the purpose of assistance from the foundation pro-

Repealing Clause

Section 2 of Ch. 344, Laws 1974 read "Section 75-7813, R. C. M. 1947, is repealed."

CHAPTER 79—TRAFFIC EDUCATION

Section

75-7906. Annual allocation and distribution of traffic education account proceeds, and allocation for state administration.

75-7906. Annual allocation and distribution of traffic education account proceeds, and allocation for state administration. The superintendent of public instruction shall annually order the distribution of all moneys in the

traffic education account to the districts conducting approved traffic education courses. The distribution of the traffic education moneys shall be based on the distribution policy promulgated by the superintendent of public instruction; provided that the reimbursements to districts shall be based upon the number of pupils, who in a given school fiscal year, complete an approved traffic education course including both the classroom instruction and behind-the-wheel driving.

Before such fund is disbursed, there shall be deducted an amount necessary to provide for the state administration of the traffic education program by the superintendent of public instruction. Such state administration may include development, printing, and distribution of essential materials; preparation of teachers of traffic education; state supervision of the program; and any and all other activities deemed necessary by the superintendent of public instruction.

History: En. 75-7906 by Sec. 440, Ch. 5,
L. 1971; amd. Sec. 1, Ch. 307, L. 1973.

Amendments

The 1973 amendment deleted from the second paragraph a final sentence limiting the amount deducted to \$24,000 annually.

CHAPTER 80—SCHOOL FOOD SERVICES

Section

75-8007. Pupils in state institutional schools included.

75-8002. Acceptance, expenditure and administration, etc.

Cross-References

Board of public education to exercise

powers and duties of board of education,
sec. 75-5617 (1).

75-8007. Pupils in state institutional schools included. The provisions of sections 75-8002 through 75-8006 shall apply to pupils in state institutional schools meeting the requirements established by the superintendent of public instruction and the applicable federal laws and regulations.

History: En. Sec. 1, Ch. 92, L. 1973.

Title of Act

An act to include pupils in state insti-

tutional schools meeting eligibility requirements in the school food services program.

CHAPTER 81—COMMUNITY COLLEGE DISTRICTS

Section

75-8107. Election of trustees—districts from which elected—terms of office.

75-8113. Qualifying and organization of board of trustees.

75-8122. Sources of financing for and types of capital expenditures.

75-8103. Supervision by board of regents.

Cross-References

Board of regents to exercise powers and

duties of board of education, sec. 75-5617
(2).

75-8106. Call of community college district organization election, etc.

Cross-References

Board of regents to exercise powers and

duties of board of education, sec. 75-5617
(2).

75-8107. Election of trustees—districts from which elected—terms of office. The regents shall provide for the election of trustees of the proposed community college district at the election held for the approval of its organ-

ization. Seven (7) trustees shall be elected at large, except that should there be in such proposed community college district one (1) or more high school districts or part of a high school district within the community college district with more than forty-three per cent (43%) and not more than fifty per cent (50%) of the total population of the proposed district, as determined by the last census, then each such district or part of district shall elect three (3) trustees and the remaining trustees shall be elected at large from the remainder or [of] the proposed community college district. Should any such high school district or such part of a high school district have more than fifty per cent (50%) of the population of the proposed district, then four (4) trustees shall be elected from such high school district or such part of high school district and three (3) trustees at large from the remainder of the proposed community college district. If the trustees are elected at large throughout the entire proposed community college district, the one receiving the greatest number of votes shall be elected for a term of seven (7) years, the one receiving the next greatest number of votes, for a term of six (6) years, the one receiving the next greatest number of votes, for a term of five (5) years, the one receiving the next greatest number of votes for a term of four (4) years, the one receiving the next greatest number of votes for a term of three (3) years, the one receiving the next greatest number of votes for a term of two (2) years, and the elected one receiving the least number of votes for a term of one (1) year. If the trustees are elected in any manner other than at large throughout the entire proposed community college district, then the trustees elected shall determine by lot the one who shall serve for seven (7) years, the one who shall serve for six (6) years, the one who shall serve for five (5) years, the one who shall serve for four (4) years, the one who shall serve for three (3) years, the one who shall serve for two (2) years, and the one who shall serve for one (1) year. Thereafter, all trustees elected shall serve for terms of seven (7) years each.

History: En. 75-8107 by Sec. 454, Ch. 5, L. 1971; amd. Sec. 4, Ch. 406, L. 1971; amd. Sec. 14, Ch. 137, L. 1973.

Amendments

The 1973 amendment substituted "population" or "census" for "school census" or "total school census" in three places.

Repealing Clause

Section 15 of Ch. 137, Laws 1973 read "Sections 75-5708, 75-5810, 75-5936 through 75-5938, and 75-6909 through 75-6911 are repealed."

75-8113. Qualifying and organization of board of trustees. Newly elected members of the board of trustees of the community college district shall be qualified by taking the oath of office prescribed by the constitution of Montana. At the organization meeting called by the board of education, the board of trustees shall be organized by the election of a president and vice-president and a secretary; said secretary may be or may not be a member of the board. The treasurer of the community college district shall be the county treasurer of the county in which the community college facilities are located.

History: En. 75-8113 by Sec. 460, Ch. 5, L. 1971; amd. Sec. 33, Ch. 100, L. 1973.

XIX, section 1, of" before "the constitution of Montana" at the end of the first sentence.

Amendments

The 1973 amendment deleted "article

75-8122. Sources of financing for and types of capital expenditures. The board of trustees of any community college district is hereby vested with the power and authority to:

(1) to (3). * * * [Same as parent volume.]

(4) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds chapter of this title.

The board of trustees of a community college district is further vested with the power and authority to accept or borrow moneys for the purposes of this section and to repay such obligations from the various revenues of the college.

History: En. 75-8122 by Sec. 469, Ch. 5, L. 1971; amd. Sec. 2, Ch. 419, L. 1973.

Amendments

The 1973 amendment substituted subdivision (4) for a subdivision authorizing an additional tax levy not exceeding ten

mills; deleted "from the federal government" after "to accept or borrow moneys" in the final paragraph; and added "and to repay such obligations from the various revenues of the college" to the end of the section.

CHAPTER 82—SCHOOL SITES, CONSTRUCTION AND LEASING

Section

- 75-8205. Trustees may sell property when resolution passed after hearing, and appeal procedure.
 75-8206.1. Department of administration to co-ordinate review of construction plans.
 75-8211. Leasing district property and disposition of any rentals.

75-8205. Trustees may sell property when resolution passed after hearing, and appeal procedure. Whenever the trustees of any district determine that a site, building, or any other real or personal property of the district is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of such district, the trustees may sell or otherwise dispose of such real or personal property in accordance with this section and without conforming to the provisions of section 75-8204.

The trustees of any district shall adopt a resolution stating their intention to sell or otherwise dispose of district real or personal property because it is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district. When such a resolution is adopted, the trustees shall set the date of the trustees meeting when they shall consider the adoption of a resolution to authorize the sale or other disposition of such real or personal property. The trustees shall cause notices to be posted in the manner required for school elections that state the text of the resolution of intention to sell or dispose of the real or personal property and the time, date, and place when the resolution authorizing the sale or other disposition will be considered for adoption. Any elector of the district shall have the right to be present and protest the passage of the resolution. If the trustees adopt the resolution and an elector has protested such adoption at the trustee meeting conducted for the hearing on the resolution, such resolution shall not become effective for five (5) days after the date of its adoption.

Any taxpayer may appeal the resolution of the trustees, at any time within five (5) days after the date of the resolution, to the district court by filing a verified petition with the clerk of such court and serving a copy

of such petition upon the district. The petition shall set out in detail the objections of the petitioner to the adoption of the resolution or to the disposal of the property. The service and filing of the petition shall stay the resolution until final determination of the matter by the court. The court shall immediately fix the time for a hearing at the earliest, convenient time. At the hearing, the court shall hear the matter de novo and may take testimony as it deems necessary. Its proceedings shall be summary and informal, and its decision shall be final.

The trustees of a district that has adopted a resolution to sell or otherwise dispose of district real or personal property and, if appealed, has been upheld by the court shall sell or dispose of such real or personal property in any reasonable manner that they determine to be in the best interests of the district. The moneys realized from the sale or disposal shall be credited to the debt service fund, building fund, general fund, or any combination of these three funds, at the discretion of the trustees.

History: En. 75-8205 by Sec. 477, Ch. 5, L. 1971; amd. Sec. 8, Ch. 91, L. 1973. tion to personal property by inserting "or personal" before "property" throughout the section.

Amendments

The 1973 amendment extended this sec-

75-8206.1. Department of administration to co-ordinate review of construction plans. All school construction plans requiring state review and approval shall be submitted to the department of administration for approval. The department of administration shall be responsible for co-ordination of school construction plan review and approval required by any other state agency.

History: En. Sec. 1, Ch. 49, L. 1973. construction plans in the department of administration.

Title of Act

An act to centralize review of school

75-8211. Leasing district property and disposition of any rentals. The trustees of any district shall have the authority to rent, lease, or let any buildings or facilities of the district under the terms specified by the trustees. Any money collected for such rental, lease, or letting shall be deposited to the credit of the housing and dormitory fund or that fund which finances the cost of maintaining such real property.

History: En. 75-8211 by Sec. 483, Ch. 5, L. 1971; amd. Sec. 2, Ch. 88, L. 1973. **Amendments**

The 1973 amendment inserted "the housing and dormitory fund or" in the second sentence of this section.

CHAPTER 83—MISCELLANEOUS PROVISIONS

Section

- 75-8305. Duty of county attorney.
- 75-8305.1. Conflict of interest.
- 75-8308.1. Fire drills to be conducted regularly.
- 75-8308.2. Number of fire drills required—avoiding severe cold weather.
- 75-8308.3. Times of drills to vary.
- 75-8308.4. Drill to sound on fire alarm system.
- 75-8308.5. Fire department to be called for actual fire.
- 75-8308.6. Recall signal to be distinct—control of signal.
- 75-8308.7. Inspection of exits—co-operation with fire department in drills.

75-8305. Duty of county attorney. Upon request of the county superintendent or the trustees of any school district, the county attorney shall be their legal adviser and shall prosecute and defend all suits to which such persons, in their capacity as public officials, may be a party, however, the trustees of any school district may, upon consent of the county attorney, employ any other attorney licensed in Montana to perform any legal services in connection with school board business.

History: En. 75-8305 by Sec. 489, Ch. 5, L. 1971; amd. Sec. 2, Ch. 263, L. 1971; amd. Sec. 1, Ch. 22, L. 1974.

Amendments

The 1974 amendment inserted "other" before "attorney" near the end of the section.

75-8305.1. Conflict of interest. In the event there should arise a conflict of interest relating solely to the performance of the official duties of the county attorney and which does not relate to a conflict of interest involving the private employment of the county attorney, the trustees of any school district shall employ any other attorney licensed in Montana.

History: En. Sec. 2, Ch. 22, L. 1974.

Title of Act

An act to amend section 75-8305, R. C.

M. 1947; authorizing and requiring trustees of school districts to employ other legal counsel than the county attorney in the event of a conflict of interest.

75-8308. Repealed.

Repeal

Section 75-8308 (Sec. 492, Ch. 5, L. 1971), relating to fire drills in schools,

was repealed by Sec. 8, Ch. 424, Laws 1973. For new law, see secs. 75-8308.1 to 75-8308.7.

75-8308.1. Fire drills to be conducted regularly. Fire exit drills shall be conducted regularly in accordance with the applicable provisions of the following sections.

History: En. 75-8308.1 by Sec. 1, Ch. 424, L. 1973.

Title of Act

An act to provide procedures for fire drills in schools; and repealing sections 75-8308 and 75-8309, R. C. M. 1947.

75-8308.2. Number of fire drills required—avoiding severe cold weather. There shall be at least eight (8) fire exit drills a year in schools. In climates where the weather is severe during the winter months, weekly drills should be held at the beginning of the school term to complete the required number of drills before cold weather so as not to endanger the health of the pupils.

History: En. Sec. 2, Ch. 424, L. 1973.

75-8308.3. Times of drills to vary. Drills shall be executed at different hours of the day or evening; during the changing of classes; when the school is at assembly; during the recess or gymnastic periods, etc., so as to avoid distinction between drills and actual fires.

History: En. Sec. 3, Ch. 424, L. 1973.

75-8308.4. Drill to sound on fire alarm system. All fire exit drill alarms shall be sounded on the fire alarm system and not on the signal system used to dismiss classes.

History: En. Sec. 4, Ch. 424, L. 1973.

75-8308.5. Fire department to be called for actual fire. Whenever any of the school authorities determine that an actual fire exists, they shall immediately call the local fire department using the public fire alarm system or such other facilities as are available.

History: En. Sec. 5, Ch. 424, L. 1973.

75-8308.6. Recall signal to be distinct—control of signal. The recall signal shall be one that is separate and distinct from and cannot be mistaken for any other signals. Such signals may be given by distinctive colored flags or banners. If the recall signal is electrical, the push buttons or other controls shall be kept under lock, the key for which shall be in the possession of the principal or some other designated person in order to prevent a recall at a time when there is a fire. Regardless of the method of recall, the means of giving the signal shall be kept under a lock.

History: En Sec. 6, Ch. 424, L. 1973.

75-8308.7. Inspection of exits—co-operation with fire department in drills. It shall be the duty of the school authorities to inspect all exit facilities periodically in order to make sure that all stairways, doors and other exits are in proper condition and co-operate with local fire department authorities in conducting fire drills.

History: En. Sec. 7, Ch. 424, L. 1973.

“Sections 75-8308 and 75-8309, R. C. M. 1947, are repealed.”

Repealing Clause

Section 8 of Ch. 424, Laws 1973 read

75-8309. Repealed.

Repeal

Section 75-8309 (Sec. 493, Ch. 5, L. 1971), relating to instruction in fire dan-

gers, was repealed by Sec. 8, Ch. 424, Laws 1973.

CHAPTER 84—ESTABLISHMENT OF MONTANA UNIVERSITY SYSTEM

75-8402. Definitions.

Cross-References

Board of regents to exercise powers and

duties of board of education, sec. 75-5617 (2).

CHAPTER 85—ADMINISTRATION OF UNIVERSITY SYSTEM

Section

75-8503.3. Motor vehicle regulation—enforcement of regulations—appeals.

Part 1—Regents

75-8501. Powers and duties.

Cross-References

Board of regents to exercise powers and

duties of board of education, sec. 75-5617 (2).

75-8503.3. Motor vehicle regulation—enforcement of regulations—appeals. The regents may authorize the president of each unit to:

(a) to (f) * * * [Same as parent volume.]

(g) To prohibit a student from registering if said student has unpaid parking assessments or fines outstanding resulting from on-campus motor vehicle or parking violations within the previous one (1) year.

History: En. Sec. 2, Ch. 398, L. 1971; Amendments
amd. Sec. 1, Ch. 246, L. 1974.

The 1974 amendment added subdivision (g).

CHAPTER 86—FINANCE FOR UNIVERSITY SYSTEM

Section

- 75-8601. Charges for tuition—waiver of nonresident fees.
- 75-8611. Honorably discharged veterans—free tuition at university of Montana.
- 75-8612. War orphans' attendance to be without fees.
- 75-8613. Board of regents of higher education to determine eligibility.
- 75-8614. Supervision of attendance and charges.

75-8601. Charges for tuition—waiver of nonresident fees. The regents may:

(a). * * * [Same as parent volume.]

(b) waive at their discretion, nonresident tuition for selected and approved nonresident students not to exceed at any unit two per cent (2%) of the full-time equivalent enrollment at that unit during the preceding year; except that when necessary such tuition may be waived in excess of two per cent (2%) of unit enrollment for nonresident students who enroll under provisions of any WICHE sponsored state reciprocal agreements which provide for the payment, where required, of the student support fee by the reciprocal state.

(c) waive resident tuition for students at least sixty-two (62) years of age.

History: En. 75-8601 by Sec. 42, Ch. 2, L. 1971; amd. Sec. 1, Ch. 231, L. 1971; amd. Sec. 1, Ch. 286, L. 1971; amd. Sec. 1, Ch. 432, L. 1971; amd. Sec. 1, Ch. 472, L. 1973; amd. Sec. 1, Ch. 171, L. 1974.

Amendments

The 1973 amendment deleted a subsection number at the beginning of the section; deleted "at Montana college of mineral science and technology" after "nonresident students who enroll" in the latter part of subdivision (b); substituted "any WICHE

sponsored state reciprocal agreements which provide for the payment, where required, of the student support fee by the reciprocal state" at the end of subdivision (b) for "the WICHE sponsored eight (8) state reciprocal agreement for mineral engineering education"; and deleted a subsection (2) reading, "No nonresident student may be admitted to the exclusion of any resident student."

The 1974 amendment added subdivision (c).

75-8611. Honorably discharged veterans—free tuition at university of Montana. All honorably discharged persons who served with the United States forces in any of its wars and who were bona fide residents of this state at the time of their entry into the United States forces shall have free fees and tuition in any of the units of the university of Montana, including the law and medical departments, and for extra studies in any of the units of the university of Montana. However, this act does not apply to persons who qualify under the provisions of the "Servicemen's Readjustment Act of 1944," being "Public Law 346 of the seventy-eighth Congress, chapter 268, second session" and "Public Law 16 of the seventy-eighth Congress, chapter 22, first session," and all acts supplementary and amendatory thereof.

History: En. Sec. 1, Ch. 194, L. 1943; amd. Sec. 1, Ch. 44, L. 1945; Sec. 77-901, R. C. M. 1947; amd. and redes. 75-8611 by Sec. 4, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this section and made minor changes in phraseology.

75-8612. War orphans' attendance to be without fees. (1) The board of regents of higher education may waive the charges for the matriculation, tuition, and any educational fees, for the children (of members of the armed forces of the United States who served on active duty during World War II or the Korean or Vietnam conflicts and who, at the time of entry into the service, had legal residence in this state and who were heretofore, or shall hereafter be, either killed in action or shall have died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States) who attend any of the units of the greater university of Montana.

(2) The educational assistance to which an eligible person is entitled to under this act may be afforded him during the period beginning on his eighteenth (18) birthday, or on the successful completion of his secondary schooling, whichever first occurs, and ending on his twenty-third (23) birthday.

(3) If he serves on duty with the armed forces as an eligible person after his eighteenth (18) birthday but before his twenty-third (23) birthday, then the period shall end five (5) years after his first discharge or release from duty with the armed forces excluding from the five (5) years all periods during which the eligible person served on active duty before August 1, 1963, pursuant to (a) a call or order thereto issued to him as a reserve after July 30, 1961, or (b) an extension of an enlistment, appointment or period of duty with the armed forces under the laws of the United States. This period may not be extended beyond his thirty-first (31) birthday by reason of this paragraph.

(4) The board of regents of higher education shall have the authority to waive the charges for the matriculation, tuition, any and all educational fees for the spouse and children of any person who is a resident of Montana and who, either while serving in the armed forces of the United States, is declared by the secretary of defense of the United States to be a prisoner of war or missing in action in connection with the conflict in Southeast Asia after January 1, 1961, or while serving the United States in a civilian capacity is declared by the secretary of state of the United States to be missing or captured in connection with the conflict in Southeast Asia after the same date.

(5) Any person who is eligible for the waiver of tuition and fees, upon being accepted for enrollment in any state-supported institution of higher education or state-supported technical or vocational school, shall continue to be eligible for such waiver until the completion of the bachelor of arts or equivalent degree, or certification of completion, as long as he remains enrolled in good standing at the school or institution. Any eligible person shall not be disqualified by either the return of the prisoner of war or person missing in action, or the reported death of the person.

History: En. Sec. 1, Ch. 141, L. 1957; 1974; Sec. 77-909, R. C. M. 1947; amd. amd. Sec. 1, Ch. 150, L. 1965; amd. Sec. 1, and redes. 75-8612 by Sec. 5, Ch. 94, L. Ch. 225, L. 1969; amd. Sec. 1, Ch. 64, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 64 and once by Ch. 94. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 64, Laws of 1974, substituted "board of regents of higher education" for

"state board of education" in the first sentence of subsection (1) and added the final two paragraphs designated by the compiler as subsections (4) and (5).

Chapter 94, Laws of 1974, renumbered the section; inserted the numerical subsection designation (1) at the beginning of the first paragraph; substituted numerical subsection designations (2) and (3) for (a) and (b) at the beginning of the next two paragraphs; and made minor changes in phraseology and punctuation.

75-8613. Board of regents of higher education to determine eligibility.

The board of regents of higher education shall determine the eligibility of a child who makes application for the benefits provided for in this act. A finding by the United States veterans' administration that a member was killed in action or died as the result of injury or other disability incurred in action is binding upon the board, but in the absence of such a finding the board shall determine the facts.

History: En. Sec. 2, Ch. 141, L. 1957; Sec. 77-910, B. C. M. 1947; amd. and redes. 75-8613 by Sec. 6, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "board of regents of higher education" for "board of education" and "state board of education" in the caption and in the first sentence; and made minor changes in phraseology.

75-8614. Supervision of attendance and charges. The board of regents of higher education shall satisfy itself of the attendance of a child at an institution.

History: En. Sec. 3, Ch. 141, L. 1957; Sec. 77-911, R. C. M. 1947; amd. and redes. 75-8614 by Sec. 7, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "board of regents of higher education" for "state board of education"; and made minor changes in phraseology.

CHAPTER 87—STUDENTS IN UNIVERSITY SYSTEM**Section**

75-8702. **Definitions.**

75-8706. Student's right to privacy—legislative intent.

75-8707. Contracts waiving right to privacy prohibited.

75-8708. Written notice required for entry to student's room—emergency.

75-8709. Search in accordance with law.

75-8710. Release of student records.

75-8711. Academic records to be kept separate—student's right to examine records.

75-8702. Definitions. Terms used in this chapter are defined as follows:

(1). * * * [Same as parent volume.]

(2) "emancipated minor" means person under the age of eighteen (18) years who supports himself from his own earnings or is married.

(a). * * * [Same as parent volume.]

(3) "minor" means male or female person who has not obtained the age of eighteen (18) years.

(4) and (5). * * * [Same as parent volume.]

(6) In the event the definition of residency or any portion thereof is declared unconstitutional as it is applied to payment of nonresident fees and tuition, the regents of the Montana university system shall have authority to make rules and regulations on what constitutes adequate evidence of residency status not inconsistent with such court decisions.

History: En. 75-8702 by Sec. 53, Ch. 2, L. 1971; amd. Sec. 17, Ch. 240, L. 1971; amd. Sec. 1, Ch. 395, L. 1971; amd. Sec. 28, Ch. 94, L. 1973; amd. Sec. 1, Ch. 397, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 94 and once by Ch. 397. Neither amendatory act mentioned or incorporated the changes made by the other.

Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 94, Laws of 1973, reduced the age specified in subdivisions (2) and (3) from nineteen to eighteen years.

Chapter 397, Laws of 1973, added subdivision (6).

75-8706. Student's right to privacy—legislative intent. It is the legislature's intent that an institution of the university system of Montana is obligated to respect a student's right of privacy. This obligation must be observed by establishing procedures to safeguard the institution's activities which are necessary to protect the health, safety and privacy of a person's residence and the privacy of his records. Intrusions by police and other officials exercising responsibility for law enforcement must be governed by standards and procedures no less stringent than those applicable to intrusions on private quarters outside the institutions. Further, a student may not be subjected to discrimination in the manner of covert records.

History: En. Sec. 1, Ch. 357, L. 1973.

Title of Act

An act requiring Montana colleges and

universities to develop procedures to protect a student's right to privacy concerning his place of residence and his college or university records.

75-8707. Contracts waiving right to privacy prohibited. A university or college facility may not require a student to sign any contract which would waive his or her right to privacy and due process of law.

History: En. Sec. 2, Ch. 357, L. 1973.

75-8708. Written notice required for entry to student's room—emergency. An authorized official of the university or college may not enter the room of a student located at such institution unless he has given the student in writing a notice. An emergency such as a fire or a call for help, or where there is probable cause to believe the occupant needs assistance is the only exception to the written notice requirement. In such an emergency evidence of crime obtained as a result of such emergency entry shall not be admissible in any court of law unless due process of law has been satisfied in obtaining such evidence.

History: En. Sec. 3, Ch. 357, L. 1973.

75-8709. Search in accordance with law. A search or entry by any law enforcement official shall be in accordance with the laws of the city, county, state and nation.

History: En. Sec. 4, Ch. 357, L. 1973.

75-8710. Release of student records. A university or college shall release a student's academic record only when requested by the student or by a subpoena issued by a court or tribunal of competent jurisdiction. A student's written permission must be obtained before the university or college may release any other kind of record unless such record shall have been subpoenaed by a court or tribunal of competent jurisdiction.

History: En. Sec. 5, Ch. 357, L. 1973.

75-8711. Academic records to be kept separate—student's right to examine records. Academic records shall be kept separate from disciplinary and all other records. Academic transcripts shall contain only information of academic nature. A student shall have the right to examine all written summaries, descriptions, statements or reports of academic or disciplinary nature which may have been compiled upon him or her.

History: En. Sec. 6, Ch. 357, L. 1973.

CHAPTER 88—MISCELLANEOUS PROVISIONS RELATING TO UNIVERSITY SYSTEM

Section

75-8806. Duties of the co-operative extension service.

75-8806. Duties of the co-operative extension service. The co-operative extension service within the department of education shall conduct investigations pertaining to insects and other arthropods affecting plants and animals. When an injurious infestation of an insect or other arthropod occurs in any part of the state, the authorized employees of the co-operative extension service shall go to the scene of the infestation, shall determine the extent and seriousness of the infestation, and make public the best remedies to be employed.

History: En. Sec. 2, Ch. 75, L. 1967; Sec. 82-804.2, R. C. M. 1947; amd. and redes. 75-8806 by Sec. 127, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted the first sentence for "It shall be the duty of the state entomologist to conduct investigations pertaining to insects and other arthropods

which affect or may affect plants and animals"; substituted "the authorized employees of the co-operative extension service shall go" for "it shall be his duty, so far as it is possible without conflicting with his other duties, to go" in the second sentence; deleted "The state entomologist or said assistant" before "shall determine" in the second sentence; and made minor changes in phraseology.

CHAPTER 90—EDUCATIONAL BROADCASTING COMMISSION

Section

75-9001. Definition.
75-9002. Chairman—meetings—compensation.
75-9003. Powers and duties.
75-9004. Noncommercial and nonpolitical programming.

75-9001. Definition. As used in this act, unless the context requires otherwise:

"Commission" means the educational broadcasting commission provided for in section 82A-511.

History: En. 75-9001 by Sec. 1, Ch. 215, L. 1974.

vided the act should be effective upon its passage and approval. Approved March 14, 1974.

Effective Date

Section 8 of Ch. 215, Laws 1974, pro-

75-9002. Chairman — meetings — compensation. (1) The commission shall elect a chairman from among its appointed members.

(2) The commission shall meet quarterly. Other meetings of the commission may be called by the chairman or by a majority of the members.

(3) Members are entitled to compensation as provided for in section 82A-112(7).

History: En. 75-9002 by Sec. 3, Ch. 215, L. 1974.

75-9003. Powers and duties. The commission shall promote, establish, operate and maintain facilities to provide noncommercial educational programs to educational institutions and the general public of the state by standard broadcast or closed circuit transmission or by other electronic means. For that purpose, the commission shall have the following powers and duties:

(1) The commission may:

(a) acquire real and other property as an agency of the state and to hold, use and dispose of such property;

(b) apply for, receive and use in the furtherance of its lawful purpose state, federal or other funds as may be appropriated to it from time to time, any funds received for services rendered under contract and contributions, matching funds, gifts from any source whether state or federal, public or private unless the same be tendered subject to conditions inconsistent with the purpose of this chapter;

(c) contract for the construction, repair, maintenance and operation of its facilities;

(d) contract with common carriers, qualified under federal or state law to provide interconnecting telecommunications relays among its facilities if interconnecting telecommunications relays of the department of administration are not available;

(e) exercise such other powers as may be necessary to effect the purpose of this chapter.

(2) The commission shall:

(a) acquire or develop educational programs for transmission by standard broadcast or closed circuit transmission facilities or other electronic means;

(b) develop programming policies for its operation and establish mechanisms for consultation with broadly representative interests throughout the state;

(c) apply for, receive and hold such authorizations, licenses, and assignments of channels from the federal communications commission or other governmental agencies as may be necessary for transmission of programming by electronic means, and to prepare, file and prosecute before the federal communications commission or other agencies all applications, reports, requests or other documents as may be necessary;

(d) have sole authority over the acquisition, use, operation and maintenance of its equipment and facilities, any provisions of section 82-3325 notwithstanding; however, the commission shall ensure compatibility between its equipment and the statewide communications system;

(e) adopt rules for the conduct of its affairs.

(3) In the establishment of the educational television system, the commission shall give special consideration to sparsely populated rural areas not presently served by an educational television system.

History: En. 75-9003 by Sec. 4, Ch. 215,
L. 1974.

75-9004. Noncommercial and nonpolitical programming. All programs shall be noncommercial. No programming shall advance or oppose any candidacy for public office, an elected official, a political party or any legislation to be considered or under consideration. Nothing in this section shall restrict the obligation of the commission under the Communications Act of 1934, 47 U.S.C. Sec. 151 et seq., to operate in the public interest and to afford reasonable opportunity for discussion of conflicting views of issues of public importance.

History: En. 75-9004 by Sec. 5, Ch. 215,
L. 1974.

CHAPTER 91—WORK-STUDY PROGRAM

Section	Purpose.
75-9101.	Definitions.
75-9102.	Montana work-study program.
75-9103.	Limitation on use of funds.
75-9104.	Funds supplemental to other funds.
75-9105.	Administration.
75-9106.	Eligibility.
75-9107.	Anti-discrimination.
75-9108.	Approval of salaries.
75-9109.	Contributions from employers.
75-9110.	Severability.

75-9101. Purpose. It is the purpose of this act to help ensure that no resident of Montana be denied attendance at institutions governed, supervised or co-ordinated by the board of regents of higher education because of financial barriers; and further to provide low-cost supplemental assistance for all governing units within Montana. The legislature intends that any Montana resident wishing to gain admittance to such institutions in Montana, within necessary budgetary limitations as provided by law, shall be allowed the opportunity to earn in part or in total sufficient money to pay the costs accompanying such attendance through employment by state and local governing units, and certain public interest organizations.

History: En. 75-9101 by Sec. 1, Ch. 307,
L. 1974.

Title of Act

An act to create a Montana work-study program to be administered by the board of regents of higher education.

75-9102. Definitions. As used in this act, unless the context otherwise requires:

(1) "Institution" means any public institution of post-secondary education governed, supervised or co-ordinated by the board of regents of higher education.

(2) "Student" means any Montana resident, as established by the board of regents of higher education, who has met the qualifications for enrollment as a full-time student at an institution, or who is presently enrolled as a full-time student in good standing, as determined by the institution.

History: En. 75-9102 by Sec. 2, Ch. 307,
L. 1974.

75-9103. Montana work-study program. The Montana work-study program is hereby established to be administered by the board of regents of higher education as provided by this act.

History: En. 75-9103 by Sec. 3, Ch. 307,
L. 1974.

75-9104. Limitation on use of funds. No less than seventy per cent (70%) of the funds allocated to the program shall be used to provide job opportunities for students with demonstrated financial need. The remainder of the funds allocated to this program may be used to provide job opportunities on a basis other than financial need. Such other bases include but are not limited to:

(1) laboratory, teaching and tutorial assistantships requiring particular skills, and

(2) cases in which a student's family cannot demonstrate financial need but in which the student has a desire to contribute toward his education through employment.

History: En. 75-9104 by Sec. 4, Ch. 307,
L. 1974.

75-9105. Funds supplemental to other funds. All funds allocated through this program are supplemental in nature and are not meant to replace existing federal and state student financial assistance funds, or any other funds that would otherwise be appropriated for student assistance.

History: En. 75-9105 by Sec. 5, Ch. 307,
L. 1974.

75-9106. Administration. The board of regents of higher education shall promulgate rules for the allocation of program funds among the institutions.

History: En. 75-9106 by Sec. 6, Ch. 307,
L. 1974.

75-9107. Eligibility. Any local governing body, state or local administrative agency, department, board, commission, judicial, legislative, or other governmental unit or nonprofit private organization is eligible to employ Montana students under the program as determined by the board of regents of higher education and within the funding limitations of the program which eligibility:

(1) will not result in the displacement of employed workers or impair existing contracts for services;

(2) will not involve any partisan or nonpartisan political activity associated with a candidate or contending group or factor in an election for public or party office;

(3) will not involve the construction, operation or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place of worship, and

(4) in the case of nonprofit organizations other than governmental units, will result in employment which is in the general public interest rather than in the interest of a particular group.

History: En. 75-9107 by Sec. 7, Ch. 307,
L. 1974.

75-9108. Anti-discrimination. No employer is eligible to employ any person under this program which employer practices discrimination in employment against any individual because of race, religion, color, sex, or national origin.

History: En. 75-9108 by Sec. 8, Ch. 307,
L. 1974.

75-9109. Approval of salaries. The salaries paid to students employed under this program and the number of hours each student works shall be approved by institution officers administering the program subject to guidelines promulgated by the board of regents of higher education; provided that in no case will any student employed under the program be paid less than the minimum wage as provided by law.

History: En. 75-9109 by Sec. 9, Ch. 307,
L. 1974.

75-9110. Contributions from employers. Each employer must contribute toward the salary of each student employed under the program at a level determined by the board of regents of higher education but at a level no less than thirty per cent (30%) of the student's hourly wage.

History: En. 75-9110 by Sec. 10, Ch. 307,
L. 1974.

75-9111. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from invalid applications.

History: En. 75-9111 by Sec. 11, Ch. 307,
L. 1974.

CHAPTER 92—PROPRIETARY POST-SECONDARY EDUCATIONAL INSTITUTIONS—LICENSING

Section	
75-9201.	Legislative purpose.
75-9202.	Definitions.
75-9203.	Exemptions.
75-9204.	Administration.

75-9205.	Advisory council.
75-9206.	Powers and duties of the department.
75-9207.	Minimum standards.
75-9208.	Prohibition.
75-9209.	License.
75-9210.	Permit.
75-9211.	Denial of application for license or permit.
75-9212.	Revocation of license or permit.
75-9213.	Hearing.
75-9214.	Judicial review.
75-9215.	Civil relief.
75-9216.	Bonds required.
75-9217.	Fees.
75-9218.	Preservation of records.
75-9219.	Enforceability of notes and contracts.
75-9220.	Violations—criminal—penalty.
75-9221.	Jurisdiction of courts—service of process.
75-9222.	Enforcement—injunction.
75-9223.	Severability.

75-9201. Legislative purpose. It is the policy of this state to encourage and enable its citizens to obtain and receive an education commensurate with their abilities and desires. It is recognized that proprietary institutions offering post-secondary educational, vocational and professional instruction perform a useful and necessary service to the citizens of the state in achieving this objective. It is found that certain institutions have either by unscrupulous, unfair and deceptive practices or through substandard instruction deprived the citizens of this state of educational opportunity and subjected them to financial loss. The actions of such institutions also reflect unfavorably upon the reputable proprietary post-secondary institutions which are in the great majority. Thus it is the purpose of this act to provide for the protection, education and welfare of the citizens of this state.

History: En. 75-9201 by Sec. 1, Ch. 296,
L. 1974.

Title of Act

An act regulating certain post-secondary educational institutions, and providing penalties; and providing an effective date.

75-9202. Definitions. As used in this act, unless the context clearly indicates otherwise:

(1) "Education or educational services" means a class, course or program of training, instruction or study.

(2) "Post-secondary education" means the education or educational services offered to persons who have completed or terminated their secondary education or who are beyond the age of compulsory school attendance for the attainment of academic, professional or vocational objectives.

(3) "Educational credential" means a degree, diploma, certificate, transcript, report, document, letters of designation, marks, appellations, series of letters, numbers or words which signify, purport or are generally taken to mean enrollment, attendance, progress or satisfactory completion of the requirements or prerequisites for education through a post-secondary educational institution.

(4) "Institution" means an academic, vocational, technical, home study, business, professional or other school, college or university, or any person, association or corporation offering educational credentials or educational

services but does not include any institution established and maintained under the laws of this state, another state or the government of the United States at the public expense.

(5) "Agent" means any person owning any interest in, employed by or representing a post-secondary educational institution in this or another state who, by solicitation in any form made in this state, seeks to enroll or enrolls a resident of this state in such post-secondary institution, or who offers to award educational credentials on behalf of such institution for remuneration, or who holds himself out to the residents of this state as representing a post-secondary institution for any such purpose.

(6) "Department" means the department of business regulation.

(7) "License" means written approval issued by the department to operate or to contract to operate a post-secondary institution in this state.

(8) "Permit" means written approval issued by the department to any person to act as an agent for a post-secondary educational institution.

(9) "Grant" means sell, award, confer, bestow or give.

(10) "Offer" means, in addition to its usual meaning, to advertise, publicize, solicit or encourage any person, directly or indirectly, in any form, to perform the act described.

(11) "Operate" means to establish and maintain any facility in this state for the purpose described and includes a contract with any person, association or corporation to establish and maintain such facility.

(12) "Application" means either an application for the initial issuance of a license or permit or for the renewal of a license or permit.

History: En. 75-9202 by Sec. 2, Ch. 296,
L. 1974.

75-9203. Exemptions. The following are exempt from the provisions of this act:

(1) institutions accredited by a national or regional accrediting agency recognized by either the board of public education or the board of regents of higher education and notification of such recognition having been given to the department by either board;

(2) education sponsored by a trade, business, professional or fraternal organization solely for the membership of the organization or offered without the payment of fees;

(3) avocational or recreational education and institutions offering such education exclusively;

(4) education offered by charitable or religious institutions, organizations or agencies unless such education is offered as leading toward educational credentials;

(5) institutions possessing a valid certificate issued by the federal aviation agency;

(6) schools of cosmetology possessing a valid certificate of registration issued under the provisions of chapter 8 of Title 66.

History: En. 75-9203 by Sec. 3, Ch. 296,
L. 1974.

75-9204. Administration. The department shall administer this act. To effect the purposes of this act, the department may request from any agency of the state, and every agency shall provide, such information as will enable the department to exercise properly its powers and perform its duties. Nothing herein shall be construed to interfere with the purpose and function of any agency of the state.

History: En. 75-9204 by Sec. 4, Ch. 296,
L. 1974.

75-9205. Advisory council. (1) There is created an advisory council. The council is composed of five (5) members appointed by the governor and two (2) ex officio members. Two (2) members shall represent the Montana Proprietary School Association, one (1) member shall represent the advisory council for vocational education, one (1) member shall represent the Montana personnel and guidance association, and one (1) member from the public at large who has no connection with education. The ex officio members shall be the superintendent of public instruction and the commissioner of higher education. Members of the council shall serve for five (5) years; except that the initial appointments shall be one (1) for three (3) years, two (2) for four (4) years, and two (2) for five (5) years.

(2) The council shall advise the department of policies, rules, regulations and procedures necessary for carrying out the provisions of this act.

(3) The council's organization, meetings, quorum and compensation are as provided in section 82A-110.

History: En. 75-9205 by Sec. 5, Ch. 296,
L. 1974.

75-9206. Powers and duties of the department. To administer this act, the department shall have the following powers and duties:

(1) to establish minimum criteria in consultation with the commissioner of higher education conforming to the minimum standards in section 7 [75-9207] of this act which applicants for a license or permit shall satisfy before a license or permit shall be issued, provided the requirements of the Administrative Procedure Act for rule-making procedures have been complied with;

(2) to receive, to investigate as it may deem necessary, and to act upon applications for a license or permit;

(3) to maintain a list of licensed institutions, of persons possessing permits and of accrediting agencies recognized under subsection (1) of section 3 [75-9203] of this act, provided that an institution and its agent exempt from this act may be included in such list upon the filing of an affidavit of exemption;

(4) to negotiate and enter into reciprocal interstate agreements with like agencies in other states if such agreements are or will affect the purposes of this act; provided, that nothing contained in such agreement shall be construed as limiting the powers and duties of the department with respect to investigating or acting upon any application for a license, or for a permit or with respect to the enforcement of any provision of this act or regulations adopted hereunder;

(5) to receive and cause to be maintained for a reasonable length of time not less than ten (10) years, copies of academic records pursuant to section 18 [75-9218] of this act;

(6) to establish with the advice of the advisory council rules, regulations and procedures necessary for the implementation of this act which, shall have the force of law; provided the requirements of the Montana Administrative Procedure Act for rule-making procedures have been complied with, and to hold hearings as it may deem advisable in developing such rules, regulations and procedures or to aid in any investigation or inquiry; and

(7) to investigate as it may deem necessary, on its own motion or on the filing of a verified complaint filed with it, any institution or person subject to or reasonably believed by the department to be subject to the provisions of this act; to subpoena any persons or documents pertaining to such investigation, which subpoenas shall be enforceable in a district court of this state; to require answers in writing under oath to questions or interrogatories propounded by the department; and to administer an oath or affirmation to any person in connection with any investigation.

History: En. 75-9206 by Sec. 6, Ch. 296,
L. 1974.

75-9207. Minimum standards. (1) In establishing the criteria required by section 6 [75-9206] of this act, the department shall observe and shall require compliance with the following minimum standards:

(a) post-secondary educational institution must be maintained and operated, or, in the case of a new institution, it must demonstrate that it can be maintained and operated, in compliance with the following minimum standards:

(i) that the quality and content of each course or program of instruction, training, or study are such as may reasonably and adequately achieve the stated objection for which the course or program is offered;

(ii) that the institution has adequate space, equipment, instructional materials and personnel to provide education of good quality;

(iii) that the education and experience qualifications of directors, administrators, supervisors, and instructors are such as may reasonably ensure that the students will receive education consistent with the objectives of the course or program of study;

(iv) that the institution provides students and other interested persons with a catalog or brochure containing information describing the programs offered, program objectives, length of program, schedule of tuition, fees and all other charges and expenses necessary for completion of the course of study, cancellation and refund policies, and such other material facts concerning the institution and program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein, together with any other disclosures required by the department; and that such information is provided to prospective students prior to enrollment;

(v) that upon satisfactory completion of training, the student is given appropriate educational credentials by the institution, indicating that the course or courses of instruction or study have been satisfactorily completed;

(vi) that adequate records are maintained by the institution to show attendance, programs, or grades, and that satisfactory standards are enforced relating to attendance, progress, and performance;

(vii) that the institution is maintained and operated in compliance with all pertinent ordinances and laws relating to the safety and health of all persons upon the premises;

(viii) that the institution is financially sound and capable of fulfilling its commitments to students;

(ix) that neither the institution nor its agents engage in advertising, sales, collection, credit, or other practices of any kind which are false, deceptive, misleading, or unfair;

(x) that the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, and instructors are of good reputation and character; and

(xi) that the institution has a fair and equitable cancellation and refund policy.

(b) an applicant for a permit to act as agent shall be an individual of good reputation and character and shall represent only a post-secondary educational institution which meets the minimum standards established in this section and the criteria established under section 6 [75-9206] of this act.

(c) no post-secondary educational institution may use the term "university" or "college" without authorization to do so from the department in consultation with the commissioner of higher education; provided that any institution subject to this act located within this state which used either term on January 1, 1974 may continue to do so by filing an affidavit to that effect with the department prior to January 1, 1975.

(2) Accreditation by national or regional accrediting agencies recognized by the United States Office of Education may be accepted by the department as evidence of compliance with the minimum standards established hereunder and the criteria established under section 6 [75-9206] of this act; provided, the department, after conferring with the commissioner of higher education, may require such further evidence and make such further investigation as in its judgment may be necessary. Accreditation by a recognized, specialized accrediting agency may be accepted as evidence of such compliance only as to the portion or program of an institution accredited by such agency if the institution as a whole is not accredited.

History: En. 75-9207 by Sec. 7, Ch. 296,
L. 1974.

75-9208. Prohibition. No person, group, association or corporation, alone or in concert with others, shall:

(1) operate in this state a post-secondary educational institution unless the institution is exempt from the provisions of this act or is licensed by the department;

(2) offer instruction in, enrollment in or grant of educational credentials as or through an agent by a post-secondary educational institution not exempted from this act whether within or without the state unless the agent possesses a currently valid permit as required by this act;

(3) accept or receive contracts or applications for enrollment from an agent unless the agent possesses a currently valid permit as required by this act;

(4) offer education or educational services or, educate or provide educational service, offer to enroll or enroll, contract or offer to contract with any person for such purpose, or offer to grant, grant or contract with any person for that purpose in this state unless the person, group, association or corporation complies with the minimum standards in section 7 [75-9207] of this act, the criteria established by the department and the rules and regulations adopted by the department;

(5) act as an agent for a post-secondary educational institution unless currently possessing a valid permit from the department.

History: En. 75-9208 by Sec. 8, Ch. 296,
L. 1974.

75-9209. License. (1) Each post-secondary educational institution not exempted from this act intending to operate or presently operating in this state shall apply to the department for a license to operate. Application shall be made on forms prescribed by the department. Each application shall be accompanied by the most recent catalog or brochure published or intended to be published by the institution. The application also shall be accompanied by evidence of payment of the fees required by this act.

(2) After review of the application and any further information required by the department, any investigation of the application which the department may deem necessary or appropriate and evidence of a surety bond as required by this act, the department shall either issue or not issue a license to operate a post-secondary educational institution. The license shall be nontransferable and may be upon such terms and conditions as the department may require.

(3) The license shall be in a form prescribed by the department and shall state in a clear and conspicuous manner at least the following information:

- (a) date of issuance, effective date and date of expiration;
- (b) the name and address of the institution licensed;
- (c) the authority for and conditions of approval, and;
- (d) any terms or conditions required by the department.

(4) No license shall be valid for more than two (2) years and may be valid for a lesser period of time.

History: En. 75-9209 by Sec. 9, Ch. 296,
L. 1974.

75-9210. Permit. (1) Each person intending to act in this state as an agent for a post-secondary institution not exempt from the provisions of this act shall make application to the department. Application shall be made on forms prescribed by the department. Each application shall be accompanied by evidence of payment of the fees required by this act and the sworn affidavits of three (3) residents of this state as to the good character and reputation of the applicant, and shall show the name and address of the institution which the applicant intends to represent.

(2) In the event the applicant intends to represent an institution not licensed to operate in this state, the application shall be accompanied by the information required of institutions applying for such a license.

(3) After review of the application and any further information required by the department, any investigation deemed necessary or appropriate and evidence of a surety bond required by this act, the department shall issue or not issue the permit to the applicant. The permit shall be nontransferable and may be upon such terms and conditions as the department may require.

(4) The permit shall be in the form prescribed by the department and shall state in a clear and conspicuous manner at least the following information:

- (a) the date of issuance, effective date and date of expiration;
- (b) the name and address of the agent;
- (c) the name and address of the institution or institutions the agent may represent;
- (d) the authority for and conditions of approval; and
- (e) any terms or conditions required by the department.

(5) No permit shall be valid for more than two (2) years and may be valid for a lesser period of time.

History: En. 75-9210 by Sec. 10, Ch. 296,
L. 1974.

75-9211. Denial of application for license or permit. (1) If the department determines that an application is deficient under the criteria established for the issuance of a license or permit, the department shall notify the applicant in writing of that determination and the deficiencies.

(2) If the applicant requests, and the request demonstrates to the department the applicant's intention and ability to remedy the deficiencies causing the denial of the license or permit, the department may grant the applicant a reasonable period of time to take such action.

(3) If a request under subsection (2) above is not made or a request is made and is denied or the period of time granted expires without remedy of the deficiencies, the application shall be denied. The department shall notify the applicant of the denial, the reasons therefor and the opportunity of the applicant for a hearing before the department provided in section 13 [75-9213].

(4) In the event an application for a permit is denied, the department shall notify in writing the institution or institutions to be represented or represented by the applicant.

History: En. 75-9211 by Sec. 11, Ch. 296,
L. 1974.

75-9212. Revocation of license or permit. If the department has reasonable cause to believe that a holder of a license or permit issued under any provision of this act has violated or is in violation of this act or criteria established under this act, the department may revoke the license or permit as provided hereafter.

(1) The department shall notify the holder in writing of the intention to revoke, the grounds for the intended action and a date upon which such revocation shall become effective.

(2) If, prior to the effective date of the revocation, the holder submits evidence showing the holder has taken action to remedy the violation or violations which has or have occurred or is occurring and such evidence is satisfactory to the department, the department may vacate the effective date of the revocation.

(3) If there is no submission under subsection (2) above, the license or permit shall be revoked on the effective date, unless the holder requests a hearing before the department under the provisions of section 13 [75-9213] of this act.

(4) In the event a permit is revoked, the department shall notify the institution or institutions represented by the holder of the revocation.

History: En. 75-9212 by Sec. 12, Ch. 296,
L. 1974.

75-9213. Hearing. Any person denied a license or permit or who has received notice of intention to revoke a license or permit shall have the right to a hearing before the department as provided herein.

(1) If, upon receipt of notification of denial or intention to revoke, the holder or applicant desires a hearing, he shall notify the department in writing of such desire within ten (10) days after the giving of notice of such action or intention.

(2) Upon receipt of such notification, the department shall fix a time and place for hearing and shall inform in writing the applicant or holder of such time and place.

(3) The department may appoint a hearing officer who shall conduct the hearing, hear testimony and receive evidence. After the hearing, the hearing officer shall prepare proposed findings of fact, conclusions of law and an order which shall be served on the parties to the hearings and presented to the department. A party adversely affected by the order may file exceptions, present briefs and argument to the department.

(4) At such hearing, the party may employ counsel, shall have the right to hear the evidence upon which the action is based and present evidence in extenuation or opposition.

(5) A decision of the department after hearing, or on the expiration of time for request for a hearing if none is made, shall be final subject to judicial review as provided in section 14 [75-9214] of this act.

History: En. 75-9213 by Sec. 13, Ch. 296,
L. 1974.

75-9214. Judicial review. Any person aggrieved or adversely affected by a final decision of the department may seek judicial review of such decision by filing a petition for a writ of certiorari in the district court of the First Judicial District, in and for the county of Lewis and Clark, not later than thirty (30) days after the date of such decision.

History: En. 75-9214 by Sec. 14, Ch. 296,
L. 1974.

75-9215. Civil relief. Any person or persons claiming loss or damage as a result of any act or practice by a post-secondary institution or its agent or both, which act or practice violates the criteria established by the department under section 6 [75-9206] of this act or the prohibitions in section 8 [75-9208] of this act, may sue in a court of proper jurisdiction of this state the institution of the agent or both and their sureties for the amount of such damage or loss and, if successful, shall be awarded, in addition to damages, court costs and reasonable attorney's fees.

History: En. 75-9215 by Sec. 15, Ch. 296,
L. 1974.

75-9216. Bonds required. (1) At the time application is made for license the department may require the post-secondary educational institution making such application to file with the department a good and sufficient surety bond in such sum as may be determined by the department. Said bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond shall be conditioned to provide indemnification to any student or enrollee or his parent or guardian, or class thereof, determined to have suffered loss or damage as a result of any act or practice which is a violation of this act by said post-secondary educational institution, and that the bonding company shall pay any final, nonappealable judgment rendered by any court of this state having jurisdiction, upon receipt of written notification thereof. Regardless of the number of years that such bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum of the bond. The bond shall be for two (2) years or coterminous with the license.

(2) An application for a permit shall be accompanied by a good and sufficient surety bond in a penal sum of one thousand dollars (\$1,000). Said bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond may be in blanket form to cover more than one agent for a post-secondary educational institution, but it shall cover each agent for said institution in a penal sum of one thousand dollars (\$1,000). The bond shall be conditioned to provide indemnification to any student, enrollee, or his or her parents or guardian, or class thereof, determined to have suffered loss or damage as a result of any act or practice which is a violation of this act by said agent, and that the bonding company shall pay any final, nonappealable judgment rendered by any court of this state having jurisdiction, upon receipt of written notification thereof. Regardless of the number of years that such bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum thereof. The bond shall be for two (2) years or coterminous with the permit.

(3) The surety bond to be filed hereunder shall cover the period of the license or the permit except when a surety shall be released as provided herein. A surety on any bond filed under the provisions of this section may be released after such surety shall serve written notice to the department forty (40) days prior to said release; but said release shall not discharge or otherwise affect any claim theretofore or thereafter filed by a student

or enrollee or his parent or guardian for loss or damage resulting from any act or practice which is a violation of this act alleged to have occurred while the bond was in effect, nor for an institution's ceasing operations during the term for which tuition has been paid while the bond was in force.

(4) A license for an institution to operate or a permit to an agent shall be suspended by operation of law when said institution or agent is no longer covered by a surety bond as required by this section; but the department shall cause the institution or an agent, or both, to receive at least thirty (30) days' written notice prior to the release of the surety to the effect that the license or permit shall be suspended by operation of law until another surety bond shall be filed in the same manner and like amount as the bond being terminated.

History: En. 75-9216 by Sec. 16, Ch. 296,
L. 1974.

75-9217. Fees. All fees collected pursuant to the provisions of this act shall be deposited in the general fund, and no fees collected under the provisions of this act shall be subject to refund. The fees to be collected by the department shall accompany an application for authorization to operate or for an agent's permit, in accordance with the following schedule:

- (1) the initial application fee for a license shall be fifty dollars (\$50);
- (2) the renewal fee for a license shall be twenty-five dollars (\$25);
- (3) the initial fee for permit shall be twenty-five dollars (\$25); and
- (4) the renewal fee for permit shall be ten dollars (\$10).

History: En. 75-9217 by Sec. 17, Ch. 296,
L. 1974.

75-9218. Preservation of records. In the event any post-secondary educational institution now or hereafter located in this state proposes to discontinue its operation, the chief administrative officer, by whatever title designated, of such institution shall cause to be filed with the department the original or legible true copies of all such academic records of such institution as may be specified by the department. Such records shall include, at a minimum, such academic information as is customarily required by colleges when considering students for transfer or advanced study; and, as a separate document, the academic record of each former student. In the event it appears to the department that any such records of an institution discontinuing its operations are in danger of being destroyed, sequestered, mislaid, or otherwise made unavailable, the department may seize and take possession of such records on its own motion, and without order of court. The department shall maintain or cause to be maintained a permanent file of such records coming into its possession.

History: En. 75-9218 by Sec. 18, Ch. 296,
L. 1974.

75-9219. Enforceability of notes and contracts. (1) If the person to whom educational services are to be rendered or furnished by a post-secondary educational institution is a resident of this state at the time any contract relating to payment for such services or any note, instrument, or other

evidence of indebtedness relating thereto is entered into, the provisions of this section shall govern the rights of the parties to such contract or evidence of indebtedness. In such event, the following agreements entered into in connection with the contract or the giving of such evidence of indebtedness are invalid:

- (a) that the law of another state shall apply;
- (b) that the maker or any person liable on such contract or evidence of indebtedness consents to the jurisdiction of another state;
- (c) that another person is authorized to confess judgment on such contract or evidence of indebtedness; and
- (d) that fixes venue.

(2) No note, instrument or other evidence of indebtedness, or contract relating to payment for education or educational services shall be enforceable in the courts of this state by any post-secondary educational institution located in Montana unless the institution shall have received a license; nor by any post-secondary educational institution having an agent or agents in Montana unless any and all agents who enrolled or sought to enroll the person to whom such services were to be rendered, or to whom educational credentials were to be granted, had a permit at the time of their contact with such person.

(3) For the purposes of this section, "lending agency" means any post-secondary educational institution or any person, association, partnership or corporation controlling, controlled by or held in common ownership with such institution, loaning money to such institution or students thereof.

(4) Any lending agency extending credit or loaning money to any person for tuition, fees, or any charges whatever of a post-secondary educational institution for educational or other services or facilities to be rendered or furnished by said institution, shall cause any note, instrument, or other evidence of indebtedness taken in connection with such loan or extension of credit to be conspicuously marked on the face thereof, "student loan." In the event such lending agency fails to do so, it shall be liable for any loss or damage suffered or incurred by any subsequent assignee, transferee, or holder of such evidence of indebtedness on account of the absence of such notation.

(5) Notwithstanding the presence or absence of such notation, and notwithstanding any agreement to the contrary, the lending agency making such loan or extending such credit, and any transferee, assignee, or holder of such evidence of indebtedness shall be subject to all defenses and claims which could be asserted against the post-secondary educational institution which was to render or furnish such services or facilities, by any party to said evidence of indebtedness or by the person to whom such services or facilities were to be rendered or furnished, up to the amount remaining to be paid thereon.

History: En. 75-9219 by Sec. 19, Ch. 296,
L. 1974.

75-9220. Violations—criminal—penalty. Any person, group, or entity, or any owner, officer, agent, or employee thereof, who shall willfully violate

the provisions of section 8 [75-9208], or who shall willfully fail or refuse to deposit with the department the records required by section 18 [75-9218], shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed one thousand dollars (\$1,000), or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment. Each day's failure to comply with the provisions of said sections shall be a separate violation. Such criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the county attorney.

History: En. 75-9220 by Sec. 20, Ch. 296,
L. 1974.

75-9221. Jurisdiction of courts—service of process. Any post-secondary educational institution not exempt from the provisions of this chapter, whether or not a resident of or having a place of business in this state, which instructs or educates, or offers to instruct or educate, enrolls or offers to enroll, contracts or offers to contract, to provide instructional or educational services in this state, whether such instruction or services are provided in person or by correspondence, to a resident of the state, or which offers to award or awards any educational credentials to a resident of this state, submits such institution, and, if a natural person his personal representative, to the jurisdiction of the courts of this state, concerning any cause of action arising therefrom, and for the purpose of enforcement of this by injunction pursuant to section 22 [75-9222]. Service of process upon any institution subject to the jurisdiction of the courts of this state may be made by personally serving the summons upon the defendant within or outside the state, in the manner prescribed by the rules of civil procedure, with the same force and effect as if the summons had been personally served within Montana. Nothing contained in this section shall limit or affect the right to serve any process as prescribed by the rules of civil procedure.

History: En. 75-9221 by Sec. 21, Ch. 296,
L. 1974.

75-9222. Enforcement—injunction. (1) The county attorney of any county in which a post-secondary educational institution or an agent thereof is found, at the request of the department or on his own motion, may bring any appropriate action or proceeding (including injunctive proceedings, or criminal proceedings pursuant to section 20 [75-9220]) in any court of competent jurisdiction for the enforcement of the provisions of this chapter.

(2) Whenever it shall appear to the department that any person, agent, group, or entity is, is about to, or has been violating any of the provisions of this act or any of the lawful rules, regulations, or orders of the department, it may, on its own motion or on the written complaint of any person, file a petition for injunction in any court of competent jurisdiction against such person, group, or entity, for the purpose of enjoining such violation or for an order directing compliance with the provisions of this, and all rules and orders issued by the department.

History: En. 75-9222 by Sec. 22, Ch. 296,
L. 1974.

75-9223. Severability. The provisions of this act are severable, and if any part or provision of it is held void, the holding of the court shall not affect or impair any other part or provision of this act.

History: En. 75-9223 by Sec. 23, Ch. 296,
L. 1974.

Effective Date

Section 24 of Ch. 296, Laws 1974 read
"This act is effective January 1, 1975."

CHAPTER 93—COMMISSION ON FEDERAL HIGHER EDUCATION PROGRAMS

Section

- 75-9301. Purpose.
75-9302. Definitions.
75-9303. Duties.

75-9301. Purpose. It is the purpose of this act to promote the education and welfare of the people of this state by creating an agency, which meets the requirements of federal law, to co-operate with the federal government in the establishment and administration of programs for higher education provided for by the Congress of the United States.

History: En. 75-9001 by Sec. 1, Ch. 220,
L. 1974.

meets federal requirements to administer state plans under federal higher education programs; and providing an effective date.

Title of Act

An act to create a commission which

75-9302. Definitions. Unless the context requires otherwise, in this act:

- (1) "Commission" means the commission on federal higher education programs provided for in section 82A-512.

History: En. 75-9002 by Sec. 2, Ch. 220,
L. 1974.

75-9303. Duties. The commission shall:

- (1) administer state plans under Title I of the federal Higher Education Facilities Act of 1963, P. L. 88-204, as amended by P. L. 89-329;
- (2) administer state plans under Title VI of the federal Higher Education Act of 1965, P. L. 89-329;
- (3) administer state plans under Title I of the federal Higher Education Act of 1965; and
- (4) administer other state plans under federal funding and grant programs which may be assigned by the governor or the legislature except those pertaining to the duties of the superintendent of public instruction and the board of public education.

History: En. 75-9003 by Sec. 4, Ch. 220,
L. 1974.

vided the act should be effective upon its passage and approval. Approved March 15, 1974.

Effective Date

Section 5 of Ch. 220, Laws 1974 pro-

REVISED CODES OF MONTANA

VOLUME 5

Part 1

1974 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 5 (PART 1) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 5
(PART 1) THROUGH VOLUME 518, PACIFIC
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MONTANA REVISED CODES

TITLE 76—SOIL AND WATER CONSERVATION

Chapter

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CHAPTER 1—STATE CONSERVATION DISTRICTS LAW

Section

- 76-101. Short title.
76-103. Definitions.
76-104. Duties of department.
76-105. Creation of conservation districts.
76-106. Election of supervisors for each district.
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76-111. Board of adjustment.
76-114. Discontinuance of districts.
76-115. Disposition of funds.
76-117. Change of district name—division and combination of districts.

76-101. Short title. This act may be known and cited as “the State Conservation Districts Law.”

History: En. Sec. 1, Ch. 72, L. 1939;
amd. Sec. 1, Ch. 73, L. 1961; amd. Sec. 1,
Ch. 431, L. 1971.

Amendments
The 1971 amendment deleted “Soil and
Water” before “Conservation.”

76-103. Definitions. Unless the context requires otherwise, in this act:

(1) “District” or “conservation district” means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth;

(2) “Supervisor” means one of the members of the governing body of a district, elected or appointed in accordance with this act;

(3) “Department” means the department of natural resources and conservation provided for in Title 82A, chapter 15;

(4) “Board” means the board of natural resources and conservation provided for in section 82A-1509;

(5) “Petition” means a petition filed under subsection (1) of section 76-105 for the creation of a district;

(6) “Nominating petition” means a petition filed under section 76-106 to nominate candidates for the office of supervisor of a soil conservation district;

(7) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state;

(8) and (9) * * * [Same as parent volume.]

(10) "Land occupier" or "occupier of land" includes a person, firm, corporation, municipality or other entity who holds title to, or is in possession of, lands lying within a district organized under this act, whether as owner, lessee, renter, tenant, or otherwise;

(11) "Due notice" means notice published at least twice, with an interval of at least fourteen (14) days between the two (2) publication dates, in a newspaper or other publication of general circulation within the proposed area, or by posting at a reasonable number of conspicuous places within the appropriate area, the posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to the notice, at the time and place designated in the notice, adjournment may be made from time to time without the necessity of renewing the notice for the adjourned dates.

(12) "Qualified elector" means a qualified elector as defined in Title 23, R. C. M. 1947.

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971; amd. Sec. 88, Ch. 253, L. 1974.

Amendments

The 1967 amendment inserted "municipality or other entity" after "corporation" in subdivision (10).

The 1971 amendment deleted "soil and water" before "conservation" in subdivision (1); substituted "commission" for

"committee" twice and deleted "soil" before "conservation" in subdivision (3); deleted "soil" before "conservation" in subdivision (5); added subdivision (12); and made a minor change in style.

The 1974 amendment deleted definitions of "Commission," "State conservation commission," and "State"; inserted definitions of "Department" and "Board"; and made minor changes in phraseology, punctuation and style.

76-104. Duties of department. In addition to the duties hereinafter conferred upon the department, it shall:

(1) Offer assistance as may be appropriate to the supervisors of conservation districts in the carrying out of their powers and programs;

(2) Keep the supervisors of each of the several districts informed of the activities and experiences of all other districts, and facilitate an interchange of advice and experiences between the districts and co-operation between them;

(3) Co-ordinate the programs of the several conservation districts hereunder so far as this may be done by advice and consultation;

(4) Secure the co-operation and assistance of the United States and of agencies of this state, in the work of the districts;

(5) Disseminate information throughout the state concerning the activities and programs of the conservation districts, and encourage the formation of districts in areas where their organization is desirable.

History: En. Sec. 4, Ch. 72, L. 1939; amd. Sec. 1, Ch. 21, L. 1951; amd. Sec. 1, Ch. 47, L. 1967; amd. Sec. 1, Ch. 291, L. 1969; amd. Sec. 3, Ch. 431, L. 1971; amd. Sec. 89, Ch. 253, L. 1974.

Amendments

The 1967 amendment substituted "twenty dollars" for "five dollars" in subsection C.

The 1969 amendment, in the fourth sen-

tence of subsection A, deleted "farmer" before "members" near the beginning, substituted "Montana association of soil and water conservation districts" for "Montana soil conservation districts association," deleted "farmer" before "member" and "members" in the sixth and eighth sentences, respectively; in subsection B, deleted a former fourth sentence reading, "It shall be supplied with suitable office accommodations at the state college at Bozeman, Montana, and shall be furnished with the necessary supplies and equipment"; and, in the third sentence in subsection C, deleted "farmer" before "members."

The 1971 amendment substituted "state conservation commission" for "state soil conservation committee" in four instances; substituted "commission" for "committee"

throughout the section; deleted "at Bozeman, Montana" after "experiment station" and after "extension service" in the third sentence of subsection A; deleted "soil and water" before "conservation districts" in the fourth sentence of subsection A; deleted "soil" before "conservation" in the sixth sentence of subsection A and in subdivisions D (1), (3), and (5); substituted "commissioners" for "committeemen" in the second sentence of subsection C; and made a minor change in style.

The 1974 amendment deleted subsections A through C relating to creation of the state conservation commission (for prior law, see parent volume); substituted "department" for "state conservation commission" in the first sentence (formerly subsection D); and made minor changes in phraseology, punctuation and style.

76-105. Creation of conservation districts. (1) Any ten (10) qualified electors within the limits of the territory proposed to be organized into a district may file a petition with the department asking that the board approve the organization of a conservation district to function in the territory described in the petition. The petition shall set forth:

- (a) The proposed name of the district;
- (b) That there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory described in the petition;
- (c) A description of the territory proposed to be organized as a district, which description may not be required to be given by metes and bounds or by legal subdivisions, but shall be considered sufficient if generally accurate;
- (d) A request that the board duly define the boundaries for the district; that a referendum be held within the territory so defined on the question of the creation of a conservation district in the territory; and that the board determine that a district be created.

(2) Where more than one (1) petition is filed covering parts of the same territory, the board may consolidate all or any part of the petitions.

(3) Within thirty (30) days after a petition has been filed with the department, it shall cause due notice to be given of a proposed hearing before the department upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of the district, upon the question of the appropriate boundaries to be assigned to the district, upon the propriety of the petition and other proceedings taken under this act, and upon all questions relevant to those inquiries. All qualified electors within the limits of the territory described in the petition, and of lands within any territory considered for addition to the described territory, and all other interested parties, are entitled to attend the hearings and be heard. If it appears to the board after reviewing the record of the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the board shall adjourn the hearing and the department

shall cause due notice of a further hearing to be given throughout the entire area considered for inclusion in the district, and the further hearing shall be held by the department. After the hearing, if the board determines, upon the facts presented at the hearing and upon other relevant facts and information as may be available to the department or the board, that there is need, in the interest of the public health, safety and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record that determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of the district. In making the determinations and in defining the boundaries, the board shall consider the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits those lands may receive from being included within the boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and other conservation districts already organized or proposed for organization under this act, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in section 76-102. The territory to be included within the boundaries need not be contiguous. If the board determines after the hearing, after due consideration of the relevant facts, that there is no need for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall deny the petition. After six (6) months have expired from the date of the denial of a petition, subsequent petitions covering the same or substantially the same territory may be filed and a new hearing held and determinations made thereon.

(4) After the board has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within the boundaries with the powers conferred upon conservation districts in this act is administratively practicable and feasible. To assist the board in the determination of this administrative practicability and feasibility, the department shall, within a reasonable time after entry of the board's finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, hold a referendum within the proposed district upon the proposition of the creation of the district, and cause due notice of the referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a conservation district of the lands below described and lying in the county(ies) of . . . , . . . , and" and "Against creation of a conservation district of the lands below described and lying in the county(ies) of . . . and" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose creation of the district. The ballot shall set forth the boundaries of the proposed district as determined by the board. All qualified electors within the boundaries of the territory, as determined by the department, are eligible to vote in the referendum.

(5) The department shall pay all expenses for the issuance of the notices and the conduct of the hearings and referenda, and shall supervise the conduct of the hearings and referenda. It shall adopt appropriate rules governing the conduct of the hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in the referendum. No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or the result thereof if notice thereof has been given substantially as herein provided and the referendum has been fairly conducted.

(6) The department shall publish the result of the referendum and the board shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the board determines that the operation of the district is not administratively practicable and feasible, it shall record that determination and deny the petition. If the board determines that the operation of the district is administratively practicable and feasible, it shall record that determination and shall proceed with the organization of the district in the manner hereinafter provided. In making its determination the board shall consider the attitudes of the qualified electors within the defined boundaries, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the proposed district, the probable expense of carrying on erosion-control operations within the district, and such other economic and social factors relevant to the determination, having due regard to the legislative determinations set forth in section 76-102; however, the board may not determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless a majority of the votes cast in the referendum upon the proposition of creation of the district have been cast in favor of the creation of the district.

(7) If the board determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two (2) supervisors to act with the three (3) supervisors elected as provided hereinafter, as the governing body of the district. The district is a governmental subdivision of this state and a public body corporate and politic, upon the taking of the following proceedings:

(8) The two (2) appointed supervisors shall present to the secretary of state an application signed by them, which shall set forth; (a) That a petition for the creation of the district was filed with the department pursuant to this act, that the proceedings specified in this act were taken pursuant to the petition, that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this act, and that the board has appointed them as supervisors; (b) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office; (c) the term of office of each of the supervisors; (d) the name which is proposed for the district; and (e) the location of the

principal offices of the supervisors of the district. The application shall be subscribed and sworn to by each of the supervisors. The application shall be accompanied by a statement by the department, which shall certify that a petition was filed, notice issued, and hearing held as provided in this act; that the board determined that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the proposed territory, and defined the boundaries thereof; that notice was given and a referendum held on the question of the creation of the district, and that the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of the district; and that thereafter the board determined that the operation of the proposed district is administratively practicable and feasible. The statement shall also set forth the boundaries of the district as they have been defined by the board.

(9) The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the secretary of state finds that the name proposed for the district is identical with that of any other conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify that fact to the board, which shall thereupon submit to the secretary of state a new name for the district, which is not subject to such defects. Upon receipt of the new name, free of such defects, the secretary of state shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed, and recorded, as herein provided, the district is a governmental subdivision of this state and a public body corporate and politic. The secretary of state shall make and issue to the supervisors without cost a certificate, under the seal of the state, of the due organization of the district, and shall record the certificate with the application and statement. The boundaries of the district shall include the territory as determined by the board, but they may not include any area included within the boundaries of another conservation district.

(10) After six (6) months have expired from the date of entry of a determination by the board that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to the determination, subsequent petitions may be filed and action taken thereon in accordance with this act.

(11) Petitions for including additional territory within an existing district may be filed with the department, and the proceedings herein provided for in the case of petitions to organize a district shall be followed in the case of petitions for the inclusion. The department shall prescribe the form for the petitions, which shall be as nearly as may be in the form prescribed in this act for petitions to organize a district. Where the total number of qualified electors in the area proposed for inclusion are less than ten (10), the petition may be filed when signed by a majority of the qualified electors of the area, and in that case no referendum need be held. In referenda upon

petitions for the inclusion, all qualified electors within the proposed additional area are eligible to vote.

(12) In a suit, action, or proceeding involving the validity or enforcement of, or relating to, a contract, proceeding, or action of the district, the district shall be considered to have been established in accordance with this act upon proof of the issuance of the certificate by the secretary of state. A copy of the certificate, duly certified by the secretary of state, is admissible in evidence in the suit, action, or proceeding and is proof of the filing and contents thereof.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974.

Amendments

The 1971 amendment substituted "qualified electors" for "occupiers of land lying" in the first sentence of subsection (1) and the last sentence of subsection (11), for "occupiers of lands lying" in the last sentence of subsection (4) and the last sentence of subsection (6), for "occupiers of land" in the second sentence of subsection (3), for "land occupiers" in the last sentence of subsection (6) and the third sentence of subsection (11); substituted "state conservation commission" for "state soil conservation committee" throughout the section; substituted "com-

mission" for "committee" throughout the section; deleted "soil and water" before "conservation district" throughout the section; substituted "majority" for "sixty-five (65) per cent" in the proviso to subsection (6) and in the last sentence of the second paragraph of subsection (8); deleted from the end of subsection (4) a former last sentence reading, "Only such land occupiers shall be eligible to vote"; and made minor changes in phraseology.

The 1974 amendment substituted "department" or "board" for "state conservation commission" and "commission" throughout the section; inserted "the board approve the organization of" in the first sentence of subsection (1); and made minor changes in phraseology, punctuation and style.

76-106. Election of supervisors for each district. Within thirty (30) days after the date of issuance by the secretary of state of a certificate of organization of a conservation district, nominating petitions may be filed with the department to nominate candidates for supervisors of the district. The department may extend the time within which nominating petitions may be filed. A nominating petition may not be accepted by the department unless it is subscribed by ten (10) or more qualified electors within the boundaries of the district. Qualified electors may sign more than one (1) nominating petition to nominate more than one (1) candidate for supervisor. The department shall give due notice of an election to be held for the election of three (3) supervisors for the district. The names of all nominees on behalf of whom the nominating petitions have been filed within the time herein designated, shall be printed, arranged in the alphabetical order of the surnames, upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three (3) names to indicate the voter's preference. All qualified electors within the district are eligible to vote in the election. The three (3) candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district. The department shall pay all the expenses of the election, shall supervise the conduct thereof, shall prescribe rules governing the conduct of the election and the determination of the eligibility of votes therein, and shall publish the results thereof.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974.

Amendments

The 1971 amendment deleted "soil" before "conservation district" in the first sen-

tence; substituted "state conservation commission" for "state soil conservation committee" in the first sentence; substituted "commission" for "committee" throughout the section; substituted "qualified electors" for "occupiers of land lying" in the third and seventh sentences, and for "land occupiers" in the fourth sentence; deleted the former eighth sentence

reading, "Only such land occupiers shall be eligible to vote"; and made minor changes in style.

The 1974 amendment substituted "department" for "state conservation commission" and "commission" throughout the section; and made minor changes in phraseology, punctuation and style.

76-107. Appointment, qualifications and tenure of supervisors. (1) The governing body of the district shall, if there are no incorporated municipalities within the boundaries of said district, consist of five (5) or seven (7) supervisors, elected or appointed as provided herein.

(2) In all cases where the boundaries of such conservation district include any incorporated municipality or municipalities, said board of supervisors, in addition to said five (5) elected supervisors, shall consist of two (2) appointed supervisors, making a total of seven (7) supervisors in such districts. The two (2) appointed supervisors must be residents of the municipalities within the district. The legislative bodies of the incorporated municipalities within the district shall, after consultation with the elected supervisors, appoint the two (2) additional supervisors. The term of office of the appointed supervisors shall be three (3) years.

(3) Where there are more than two (2) incorporated municipalities within a district, then the two (2) appointed supervisors shall represent all the municipalities and urban interests in the district, and no municipality shall have more than one (1) appointed supervisor residing therein.

(4) The supervisors shall annually elect a chairman from their members. The term of office of each supervisor shall be three (3) years, except that the supervisors who are first appointed shall be designated to serve for terms of one (1) and two (2) years, respectively, from the date of their appointment. An elected supervisor shall hold office until his successor has been elected and has qualified. Any vacancy occurring in the office of an elected supervisor shall be filled by appointment by the remaining supervisors until the next regular election, when a successor shall be elected to serve the unexpired term. A majority of the supervisors constitute a quorum and the concurrence of a majority in any matter within their duties is required for its determination. A supervisor may not receive compensation for his services, but he is entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

(5) The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require, or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one (1) or more supervisors, or to one (1) or more agents or employees, such powers and duties as they consider proper. The supervisors shall furnish to the department copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they adopt or employ, and such other information con-

cerning their activities as may be required in the performance of their duties under this act.

(6) The supervisors shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings, and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. A supervisor may be removed by the board upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

(7) The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of the municipality or county.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974.

Amendments

The 1967 amendment inserted "if there are no incorporated municipalities within the boundaries of said district" in the first paragraph; inserted second and third paragraphs identical with the present second and third paragraphs, except that "soil and water" preceded "conservation district"; and inserted "an elected" before "supervisor" in the third and fourth sentences of the fourth paragraph.

The 1971 amendment deleted all the insertions made by the 1967 amendment; in-

serted "or seven (7)" and "or appointed" in the first paragraph; substituted "state conservation commission" for "state soil conservation committee" in the last sentences of the third and fourth paragraphs, now the fifth and sixth paragraphs; and made minor changes in style and phraseology.

The 1973 amendment reinserted all of the language inserted by the 1967 amendment except the words "soil and water" before "conservation district."

The 1974 amendment inserted numerical subsection designations; substituted "department" for "state conservation commission" in subsection (5); substituted "board" for "state conservation commission" in subsection (6); and made minor changes in phraseology and punctuation.

76-108. Powers of districts and supervisors. A. A conservation district organized under the provisions of this act shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this act:

(1) * * * [Same as parent volume.]

(2) To conduct soil, vegetation, and water resources conservation projects on lands within the districts upon obtaining the consent of the owner of such lands or the necessary rights or interest in such land;

(3) To carry out preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district, including, but not limited to, engineering operations, range management, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection C of section 76-102, R. C. M. 1947, on lands owned or controlled by this state or any of its agencies with the co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands;

(4) and (5). * * * [Same as parent volume.]

(6) To make available on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion, and for flood prevention and the conservation, development, utilization, and disposal of water;

(7) to (11) * * * [Same as parent volume.]

(12) To borrow money and incur indebtedness and to issue bonds or other evidence of such indebtedness; also to refund or retire an indebtedness or lien that may exist against the district or property thereof;

(13) To fix and revise as necessary and collect rates, fees, tolls, rents, or other charges for the use of or for services, facilities and materials furnished or provided. Revenues from these sources may be expended in carrying out the purposes and provisions of this act;

(14) To cause taxes to be levied in the same manner provided for in Title 76, chapter 2, R. C. M. 1947, for the purpose of paying any obligation of the district and to accomplish the purposes of this act in the manner herein provided.

B. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971.

Amendments

The 1969 amendment designated the first paragraph as subsection A; rewrote subdivision (2), for previous text of which see parent volume; in subdivision (3), in-

serted "R. C. M. 1947" after "section 76-102" and substituted "or" for "of" before "the necessary rights"; in subdivision (6), inserted "and" before "disposal of water"; inserted present subdivisions (12) through (14); and designated former subdivision (12) as subsection B.

The 1971 amendment deleted "soil" before "conservation" at the beginning of subsection A.

76-109. Adoption of land-use regulations. (A) The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and water resources and preventing and controlling erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The supervisors shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the qualified electors within the boundaries of the district for their indication of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such referendum.

(B) The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notices of the referendum

shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed ordinance No. _____, prescribing land-use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance No. _____, prescribing land-use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert and [an] "X" mark in the square before one (1) or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance. The supervisors shall supervise such referendum, shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof. All qualified electors within the district shall be eligible to vote in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

(C) The supervisors shall not have authority to enact such proposed ordinance into law unless a majority of the votes cast in such referendum shall have been cast for approval of the said proposed ordinance. The approval of the proposed ordinance by a majority of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law. Land-use regulations prescribed in ordinances adopted pursuant to the provisions of this section by the supervisors of any district shall have the force and effect of law in the said district and shall be binding and obligatory upon all occupiers of lands within such district.

(D) Any qualified elector within such district may at any time file a petition with the supervisors asking that any or all of the land-use regulations prescribed in any ordinance adopted by the supervisors under the provisions of this section shall be amended, supplemented, or repealed. Land-use regulations prescribed in any ordinance adopted pursuant to the provisions of this section shall not be amended, supplemented or repealed, except in accordance with the procedure prescribed in this section for adoption of land-use regulations. Referenda on adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in six (6) months.

The regulations to be adopted by the supervisors under the provisions of this section may include:

1. to 4. * * * [Same as parent volume.]

5. Provisions for such other means, measures, operations, and programs as may assist conservation of soil and water resources and prevent or control erosion in the district, having due regard to the legislative findings set forth in section 76-102.

The regulations shall be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, grazing and cropping pro-

grams, and tillage and range practices in use, and other relevant factors and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land-use regulations adopted under the provisions of this section shall be printed and made available to all occupiers of land within the district.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971.

Compiler's Notes

The compiler has inserted the bracketed word "an" in the fourth sentence of subsection (B).

Amendments

The 1971 amendment substituted "water" for "soil" in the first sentence of subsection (A); deleted "soil" before "erosion" at the end of the first sentence of subsection (A); substituted "qualified electors" for "occupiers of lands lying" in the

last sentence of subsection (A), for "occupiers of lands within" in the sixth sentence of subsection (B), and for "occupier of land" in the first sentence of subsection (D); deleted the former seventh sentence of subsection (B) reading, "Only such land occupiers shall be eligible to vote"; inserted "and water" before "resources" in subdivision (D) 5; deleted "soil" before "erosion" in subdivision (D) 5; deleted "lying" after "occupiers of land" in the last sentence of the final paragraph of subsection (D); and made a minor change in punctuation.

76-110. Performance of work under the regulations by the supervisors.

(1) * * * [Same as parent volume.]

(2) Where the supervisors of any district shall find that any of the provisions of land-use regulations prescribed in any ordinance adopted in accordance with the provisions of section 76-109 are not being observed on particular lands, and that such nonobservance tends to increase erosion on such lands, and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present to the district court of the county in which the lands of the defendant may lie, a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant to observe such regulations, and to perform particular work, operations, or avoidances as required thereby, and that such nonobservances tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the defendant.

(3) * * * [Same as parent volume.]

(4) The court may dismiss the petition; or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such land into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five per cent (5%) a year from the defendant. In all cases

where the person in possession of lands, who shall fail to perform such work, operations, or avoidances shall not be the owner, the owner of such lands shall be joined as party defendant.

(5) The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five per cent (5%) a year until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971.

Amendments

The 1971 amendment deleted "land occupier" after "the failure of the defendant"

near the middle of subsection (2); substituted "defendant" for "occupier of such land" at the end of subsection (2) and at the end of the first sentence of subsection (4); and made minor changes in phraseology.

76-111. Board of adjustment. (1) Where the supervisors of a district adopt an ordinance prescribing land-use regulations in accordance with section 76-109, they shall further provide by ordinance for the establishment of a board of adjustment. The board of adjustment shall consist of three (3) members, each to be appointed for a term of three (3) years, except that the members first appointed shall be appointed for terms of 1, 2, and 3 years, respectively. The members of each board of adjustment shall be appointed by the department, with the advice and approval of the supervisors of the district for which the board has been established, and may be removed by the department, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason, the hearing to be conducted jointly by the department and the supervisors of the district. Vacancies in the board of adjustment shall be filled in the same manner as original appointments and shall be for the unexpired term of the member whose term becomes vacant. Members of the board of natural resources and conservation, employees of the department, and the supervisors of the district are ineligible to appointment as members of the board of adjustment. The members of the board of adjustment shall receive compensation for their services at the rate of four dollars (\$4) per diem for time spent on the work of the board, in addition to expenses, including traveling expenses, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board, upon the certificate of the chairman of the board.

(2) The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with this act, and with any ordinance adopted pursuant to this section. The board shall annually elect a chairman from among its members. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two (2) members of the board constitute a quorum. The chairman, or in his absence, such other member of the board as he may designate to

serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

(3) Any qualified elector may file a petition with the board of adjustment, alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land-use regulations prescribed by ordinance approved by the supervisors, and praying the board to authorize a variance from the terms of the land-use regulations in the application of the regulations to the lands occupied by the petitioner. Copies of the petition shall be served by the petitioner upon the chairman of the supervisors of the district within which his lands are located and upon the department. The board of adjustment shall fix a time for the hearing of the petition and cause due notice of the hearing to be given. The supervisors of the district and the department are entitled to appear and be heard at the hearing. A qualified elector within the district who objects to the authorizing of the variance prayed for may intervene and become a party to the proceedings. A party to the hearing before the board may appear in person, by agent, or by attorney. If, upon the facts presented at the hearing the board determines that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record that determination and shall make and record findings of fact as to the specific conditions which establish the great practical difficulties or unnecessary hardship. Upon the basis of the findings and determination, the board may order a variance from the terms of the land-use regulations, in their application to the lands of the petitioner, that will relieve the great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and such that the spirit of the land-use regulations are observed, the public health, safety, and welfare secured, and substantial justice done.

(4) A petitioner aggrieved by an order of the board granting or denying, in whole or in part, the relief sought, the supervisors of the district, or an intervening party, may obtain a review of the order in any district court of the county, in which the lands of the petitioner lie, by filing in the court a petition praying that the order of the board be modified or set aside. A copy of the petition shall immediately be served upon the parties to the hearing before the board, and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board, including the documents and testimony upon which the order complained of was entered, and the findings, determination, and order of the board. Upon the filing, the court shall cause notice thereof to be served upon the parties, and the court has jurisdiction of the proceedings and of the questions determined or to be determined therein, and may grant such temporary relief as it deems just and proper, and make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, the order of the board. A contention that is not urged before the board may not be considered by the court unless the fail-

ure or neglect to urge the contention is excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, are conclusive. If a party applies to the court for leave to produce additional evidence and shows to the satisfaction of the court that the evidence is material and that there are reasonable grounds for the failure to produce the evidence in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings, taking into consideration the additional evidence so taken and filed, and it shall file the modified or new findings, which, if supported by evidence, are conclusive, and shall file with the court its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court is exclusive and its judgment and decree are final, except that they are subject to review in the same manner as are other judgments or decrees of the court.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974.

Amendments

The 1971 amendment substituted "state conservation commission" for "state soil conservation committee" throughout the section; substituted "qualified elector" for "land occupier" in the first sentence, and for "occupiers of land lying" in the fifth sentence, of subsection C; and made minor changes in style and punctuation.

sentence, of subsection (3); and made minor changes in style and punctuation.

The 1974 amendment substituted "department" for references to the state conservation commission or its chairman throughout the section; substituted "board of natural resources and conservation" and "employees of the department" in the fifth sentence of subsection (1) for "state conservation commission"; and made minor changes in phraseology, punctuation and style.

76-114. Discontinuance of districts. (1) At any time after five (5) years after the organization of a district under this act, any ten (10) qualified electors within the boundaries of the district may file a petition with the department, praying that the board terminate the operations of the district and discontinue the existence of the district. The department may conduct such public meetings and public hearings upon the petition as are necessary to assist it and the board in the consideration thereof.

(2) Within sixty (60) days after the petition has been received by the department it shall give due notice of the holding of a referendum, and shall supervise the referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the . . . (name of the conservation district to be here inserted)" and "Against terminating the existence of the . . . (name of the conservation district to be here inserted)" shall appear, with the square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose discontinuance of the district. All qualified electors within the boundaries of the district are eligible to vote in the referendum. No informalities in the conduct of the referendum or in any matters relative thereto shall invalidate the referendum or the result thereof if notice thereof is given substantially as herein provided and the referendum is fairly conducted.

(3) The department shall publish the result of the referendum and the

board shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the board determines that the continued operation of the district is administratively practicable and feasible, it shall record that determination and deny the petition. If the board determines that the continued operation of the district is not administratively practicable and feasible, it shall record that determination and shall certify the determination to the supervisors of the district.

(4) In making the determination the board shall give due regard and weight to the attitudes of the qualified electors lying within the district, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the district, the probable expense of carrying on erosion control operations within the district, and such other economic and social factors as may be relevant to the determination, having due regard to the legislative findings set forth in section 76-102; however, the board may not determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum are cast in favor of the continuance of the district.

(5) Upon receipt from the department of a certification of the board that the board has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to this section, the supervisors shall immediately proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of the sale to be covered into the state treasury. The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of the district, and shall transmit with the application the certificate of the board, setting forth the determination of the board that the continued operation of the district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of the properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record the certificate in an appropriate book of record in his office.

(6) Upon issuance of a certificate of dissolution under this section, all ordinances and regulations theretofore adopted and in force within the district are void. All contracts previously entered into, to which the district or supervisors are parties, remain in effect for the period provided in those contracts. The department shall be substituted for the district or supervisors as party to the contracts. The department is entitled to all benefits and subject to all liabilities under the contracts and has the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate the contracts by mutual consent or otherwise, as the supervisors of the district would have had. The dissolution does not affect the lien of any judgment entered under section 76-110, nor the pendency of an action instituted under that section, and the department succeeds to

all rights and obligations of the district or supervisors as to those liens and actions.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974.

Amendments

The 1971 amendment substituted "qualified electors" for "occupiers of land lying" in the first sentence of subsection (1), for "occupiers of lands lying" in the second sentence of subsection (2), for "occupiers of lands" near the beginning of subsection (4), and for "land occupiers" near the middle of subsection (4); substituted "state conservation commission" for "state soil conservation committee"

throughout the section; substituted "commission" for "committee" throughout the section; deleted "soil" before "conservation" twice in the first sentence of subsection (2); and deleted a former third sentence of subsection (2) reading, "Only such land occupiers shall be eligible to vote."

The 1974 amendment substituted "department" or "board" for "state conservation commission" and "commission" throughout the section; and made minor changes in phraseology, punctuation and style.

76-115. Disposition of funds. (1) Unless otherwise provided by law, all moneys which may from time to time be appropriated out of the state treasury to pay the administrative and other expenses of conservation districts shall be allocated by the department among the districts already organized, or to be organized, during the ensuing biennial fiscal period, in accordance with the procedure specified in subsection (2) of this section. All moneys allocated to a district by the department shall be available to the supervisors of the district for all administrative and other expenses of the district under this act and for all administrative and other expenses of the board of adjustment established or to be established by the district.

(2) Seventy-five per cent (75%) of all moneys which may be appropriated to pay the administrative and other expenses of conservation districts shall be allocated by the department among all the districts organized, or to be organized, within the ensuing biennial fiscal period, under this act, in direct proportion to the total acreage of land within each district. The remaining twenty-five per cent (25%) of the moneys shall be allocated by the department among the districts on such basis of allocation as is fair, reasonable, and in the public interest, giving due consideration to the greater relative expense of carrying on operations within the particular districts because of such factors as unusual topography, unusual severity of erosion, special difficulty of carrying on operations, special volume of work to be done, and the special importance of instituting erosion control operations immediately. In making allocations of the moneys, the department shall retain an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with this section from time to time among districts which may be organized after the initial allocations are made, but within the ensuing biennial fiscal period.

(3) The department shall submit to the department of administration, on or before the first (1st) day of August of each year preceding a regular session of the legislative assembly a request for an appropriation as provided in the budget act. The request for an appropriation shall state, in addition to the requirements of the budget act, the following:

The number and acreages of districts in existence or in process of organization, together with an estimate of the number and probable acreages of

the districts which may be organized during the ensuing biennial fiscal period; a statement of the balance of funds, if any, available to the department and to the districts; and the estimates of the department as to the sums needed for its administrative and other expenses and for allocation among the several districts during the ensuing biennial fiscal period.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974.

Amendments

The 1971 amendment deleted "soil" before "conservation districts" in the first sentences of subsections A and B; substituted "commission" for "committee" throughout the section; substituted "state conservation commission" for "state soil

conservation committee" in the first sentences of subsections B and C; and made minor changes in style and phraseology.

The 1974 amendment substituted "department" for "state soil conservation commission" and "commission" throughout the section; substituted "department of administration" for "state board of examiners" in subsection (3); and made minor changes in phraseology, punctuation and style.

76-117. Change of district name—division and combination of districts.

(1) Petitions for changing the name of a district organized under this act may be filed with the department. The petition shall be signed by a majority of the district supervisors and shall state the present name of the district and the proposed new name. If the department determines that the proposed new name is not identical with or so similar to that of any other district in the state as to lead to confusion or uncertainty, it shall present a statement of that determination to the secretary of state, who shall issue to the district a certificate, under the seal of the state, evidencing the change of name of the district. Upon the issuance of the certificate, the supervisors of the district shall cause due notice to be given of the change of the name of the district.

(2) A petition may be filed with the department for the division of any district or the combination of any two (2) or more districts, or for the division of a district and the combination of any divided part thereof with any other district. Any or all of these actions may be initiated by the filing of a single petition with the department. The petition shall be signed by a majority of the members of each of the governing bodies of the affected districts. The department shall prescribe the form for the petition. Upon the filing of the petition, the department shall within thirty (30) days give due notice of public hearing upon the petition. All qualified electors within the affected districts, and all other interested parties, are entitled to attend the hearing and be heard. After the hearing, the board of natural resources and conservation upon the record of the hearing shall determine whether the proposed division, the combination or division and combination of territory is administratively practicable and feasible. In making the determination the board shall give due regard to the legislative determinations set forth in section 76-102 and to the considerations enumerated in section 76-105, to the extent applicable, relative to determining the practicability and feasibility of creating a district.

(3) If the board determines that the proposed division or combination, or division and combination, is administratively practicable and feasible, the board shall effect the proposed division, combination, or division and combination by filing with the secretary of state a statement certifying the changes made in the boundaries of the affected districts, together with any

change in the name of the districts. If the determination is in the negative the board shall make and record that determination and shall deny the petition. After six (6) months from the denial of the petition, a new petition may be filed.

(4) Upon the division of a district, the supervisors thereof shall allocate the property, rights and liabilities, including contractual obligations, of the district among the resulting parts of the district, giving due consideration to the proportionate size of each divided part, the number of qualified electors and operating units and the degree and extent of soil erosion therein, and other relevant factors. A statement of the allocation shall be filed with the department within thirty (30) days after the notification of the board's determination in favor of the division of the district. Upon the failure of the supervisors to make, or to agree upon, the allocation, it shall be made by the department after such hearing as the department considers necessary, and with due regard for the standards set out in this paragraph for making the allocations.

History: En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959; amd. Sec. 13, Ch. 431, L. 1971; amd. Sec. 96, Ch. 253, L. 1974.

Amendments

The 1971 amendment substituted "state conservation commission" for "state soil conservation committee" in the first sentence of subsection (1); substituted "commission" for "committee" throughout the section; substituted "qualified electors" for

"occupiers of lands" in the sixth sentence of subsection (2), and for "land occupiers" in the first sentence of subsection (4); and made minor changes in phraseology and style.

The 1974 amendment substituted "department," "board of natural resources and conservation," or "board" throughout the section for "state conservation commission" and "commission"; and made minor changes in phraseology, punctuation and style.

CHAPTER 2—CONSERVATION DISTRICT ASSESSMENTS AND FUNDS

Section

- 76-201. Notice of organization of district filed.
- 76-205. Division between counties of money to be raised by regular and special assessment.
- 76-206. Expenses to be covered by estimate.
- 76-207. Regular and special assessments.
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- 76-221. Investment of funds in interest-bearing securities authorized—conversion into cash.
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- 76-223. Issuance of bonds authorized—other financing—special elections.
- 76-224. Establishment of project areas upon petition—special assessments.
- 76-225. Hearing on petition to establish project area—report of supervisors—election on creation—filing notice of creation.
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- 76-229. Estimates of expenses of project area—financing by assessments.
- 76-230. Federal authority unaffected.
- 76-231. Special assessments a lien.
- 76-232. Assessments unaffected by misnomers and mistakes relating to ownership.
- 76-233. Duty to maintain improvements.

76-201. Notice of organization of district filed. The supervisors of a conservation district shall, within ten (10) days after the creation of the district, or within thirty (30) days after the effective date of this act, cause a notice declaring the district organized to be filed for record in the office of the county clerk and recorder of each county in which any portion of the district is situated.

History: En. Sec. 1, Ch. 253, L. 1963; amd. Sec. 3, Ch. 291, L. 1969; amd. Sec. 14, Ch. 431, L. 1971.

Amendments

The 1969 amendment inserted "and water" before "conservation district."

The 1971 amendment deleted "soil and water" before "conservation district."

76-205. Division between counties of money to be raised by regular and special assessment. If the district lies in more than one county the supervisors of the district shall divide the amount of the estimate of the regular assessment in the proportion to the value of the land in the district lying in each county. The value shall be determined from the last assessment rolls of the counties. The supervisors shall furnish the boards of county commissioners of each of the respective counties a statement of the part of the estimate apportioned to the county. The estimates of the special assessments shall be divided in proportion to the value of land lying within the project area.

History: En. Sec. 5, Ch. 253, L. 1963; amd. Sec. 4, Ch. 291, L. 1969.

regular assessment" after "amount of the estimate" in the first sentence; and added the last sentence.

Amendments

The 1969 amendment inserted "of the

76-206. Expenses to be covered by estimate. The total amount of the estimate shall be sufficient to raise the amount of money necessary during the ensuing year to pay the incidental expenses of the district.

History: En. Sec. 6, Ch. 253, L. 1963; amd. Sec. 5, Ch. 291, L. 1969.

Amendments

The 1969 amendment deleted provisions requiring that estimate be sufficient for costs of work during ensuing year, esti-

mated cost of repairs to and maintenance of property and works and estimated expenses of any action or proceeding to which district was or might be a party, including the cost of employing engineers and attorneys.

76-207. Regular and special assessments. Assessments levied pursuant to this act shall be known as regular and special assessments.

History: En. Sec. 7, Ch. 253, L. 1963; amd. Sec. 6, Ch. 291, L. 1969.

Amendments

The 1969 amendment inserted "and special" before "assessments."

76-208. Maximum regular assessment. The regular assessment in any one (1) year shall not exceed one and one-half ($1\frac{1}{2}$) mills on the dollar of total taxable valuation of real property within the district except that cities that voted to be included in a district prior to July 1, 1971, shall, by a majority vote of the council, be excluded from the district. The valuation shall be determined according to the last assessment roll.

History: En. Sec. 8, Ch. 253, L. 1963; amd. Sec. 3, Ch. 152, L. 1965; amd. Sec. 7, Ch. 291, L. 1969; amd. Sec. 15, Ch. 431, L. 1971.

Amendments

The 1969 amendment increased the assessment from "one-half ($\frac{1}{2}$) of one (1) mill" to "one and one-half ($1\frac{1}{2}$) mills" and

substituted "district" for "county" in the first sentence.

The 1971 amendment substituted "except that cities * * * from the district"

for "except that within incorporated cities and towns" at the end of the first sentence.

76-209. Levy of regular and special assessment. The board of county commissioners of each county in which there lies any portion of the district may, annually, at the time of levying county taxes, levy an assessment on the taxable real property within the district except that cities that voted to be included in a district prior to July 1, 1971, shall, by a majority vote of the council, be excluded from the district. It shall be known as the "_____ (name of district) conservation district regular assessment," and shall be sufficient to raise the amount reported to them in the estimate of the supervisors.

The board of county commissioners of each county in which there lies any portion of a project area may, annually, at the time of levying county taxes, levy an assessment on the taxable real property within the project area, not to exceed three (3) mills. It shall be known as "_____ (name of the project area) special assessment," and shall be sufficient to raise the amount reported to them in the estimate of the supervisors.

History: En. Sec. 9, Ch. 253, L. 1963; amd. Sec. 4, Ch. 152, L. 1965; amd. Sec. 8, Ch. 291, L. 1969; amd. Sec. 16, Ch. 431, L. 1971.

Amendments

The 1969 amendment substituted "district" for "county" after "real property within the" in the first sentence; in the second sentence, substituted "soil and water conservation district regular assessment" for "soil conservation district as-

essment" and deleted a proviso at the end reading, "provided, however, that income from the levy of the assessment provided in this act for any single district shall not exceed one thousand dollars (\$1000)"; and added the second paragraph.

The 1971 amendment substituted "except that cities * * * from the district" for "except that within incorporated cities and towns" at the end of the first sentence of the first paragraph.

76-210. Computation of rate of assessment. The board of county commissioners shall determine the rate of assessment by deducting fifteen per cent (15%) for anticipated delinquencies from the total assessed value of the taxable real property in the district except that cities that voted to be included in a district prior to July 1, 1971, shall, by a majority vote of the council, be excluded from the district and then dividing the sum required to be raised by the remainder of the total assessed value. If a fraction of a cent occurs in a valuation of one hundred dollars (\$100) it shall be taken as a full cent.

History: En. Sec. 10, Ch. 253, L. 1963; amd. Sec. 5, Ch. 152, L. 1965; amd. Sec. 9, Ch. 291, L. 1969; amd. Sec. 17, Ch. 431, L. 1971.

Amendments

The 1969 amendment substituted "dis-

trict" for "county" and inserted "that" before "within incorporated cities" in the first sentence.

The 1971 amendment substituted "except that cities * * * from the district" for "except that within incorporated cities and towns" in the first sentence.

76-215. Depository of district funds. The treasury of the principal county is the depository of all of the county tax funds of the district.

History: En. Sec. 15, Ch. 253, L. 1963; amd. Sec. 10, Ch. 291, L. 1969.

Amendments

The 1969 amendment inserted "county tax" before "funds."

76-216. Receipt and crediting of district funds—responsibility on bond.

The treasurer of the principal county shall receive and receipt for all county tax money of the district and place the same to the credit of the district. He is responsible on his official bond for the safekeeping and disbursement, in the manner provided in this act, of the money of the district held by him.

History: En. Sec. 16, Ch. 253, L. 1963;
amd. Sec. 11, Ch. 291, L. 1969.

Amendments

The 1969 amendment inserted "county tax" before "money of the district" in the first sentence.

76-220. District authorized to borrow money—pledging credit of district or issuance of warrants—levy for repayment—limitation on warrants.

If after the levy of the annual assessments for the current year, the board finds that because of some unusual or unforeseen cause, funds raised through the collection of the assessments, and from other sources, will not be sufficient for the proper maintenance and operation of the district, and the works therein, the board may borrow additional funds needed to an amount not to exceed fifty cents (\$.50) per acre for the lands within the district and may pledge the credit of the district for the payment of the same, or the board may request the county commissioners to issue and register warrants in anticipation of further collections. The board shall include in the levy for the ensuing year the amount required to pay the loan or to retire the warrants. The warrants shall not exceed ninety per cent (90%) of the assessment for the year.

History: En. Sec. 12, Ch. 291, L. 1969.

76-221. Investment of funds in interest-bearing securities authorized—conversion into cash.

The board of supervisors shall have the power and authority to direct the investment of funds in a sinking fund in interest-bearing securities whenever in their judgment the same may be to the best interests of the district. But, all such securities shall be converted into cash in time to meet the principal on the bonds, payable from such sinking fund promptly at their maturity.

History: En. Sec. 13, Ch. 291, L. 1969.

76-222. Investment of unneeded surplus funds—deposit of funds with depository or bank—surety bond or pledge of securities to ensure payment of deposit.

The board of supervisors of a conservation district may invest any surplus funds of the district, except county tax funds, not needed for immediate use in the operations of the district or its activities, or to pay bonds or coupons, or to meet current expenses, in interest-bearing bonds or securities of the United States or of any agency of the United States if the bonds are guaranteed by the United States, or in bonds of the state of Montana or any county or municipal corporation in said state. The board of supervisors of said district may require any funds of the district to be deposited with such depository or bank as may be designated by the board, and likewise shall have authority to require the treasurer of the district to take from such depository a bond with corporate surety to ensure payment of any such deposit, or to require

such depository to pledge securities of the same kind as the district is authorized to invest its funds in, to ensure payment of any such deposit.

History: En. Sec. 14, Ch. 291, L. 1969;
amd. Sec. 18, Ch. 431, L. 1971.

Amendments

The 1971 amendment deleted "soil and water" before "conservation district" near the beginning of the first sentence.

76-223. Issuance of bonds authorized—other financing—special elections. Whenever a board of supervisors deems it necessary, it may issue bonds payable from revenues, assessments, or both, or the district may use other financing as provided for by this act for the cost of works. The board of supervisors may call a special election to vote upon the proposition of issuing the bonds or may submit the proposition as a special question at a regular or general election. The notice of the election and the election itself shall be carried out in accordance with section 76-225 of this act. If from the returns of the election it appears that the majority of votes cast at such election were in favor of and assented to the incurring of the indebtedness, then the board of supervisors may, by resolution, provide for the issuance of such bonds. The authorization of such undertaking, the form, and content shall be carried out in accordance with section 11-2404 of the Municipal Revenue Bond Act of 1939. Validity of such bonds, use of revenue, and refunding shall be in accordance with the provisions of sections 11-2406, 11-2410, and 11-2414 of the Municipal Revenue Bond Act of 1939. Any bonds issued under this act have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.

History: En. Sec. 15, Ch. 291, L. 1969;
amd. Sec. 19, Ch. 431, L. 1971.

Amendments

The 1971 amendment substituted "section 76-225" for "section 18 [17]" in the third sentence.

76-224. Establishment of project areas upon petition—special assessments. Whenever the public interest or convenience may require and upon the petition of a county, city, town, or by a co-operative grazing association or other special purpose district, or by more than fifty per cent (50%) of the qualified electors affected thereby the board of supervisors is hereby authorized and empowered to establish project areas for carrying out projects to accomplish one (1) or more of the purposes of the district and within which area special assessments can be made for carrying out project purposes.

History: En. Sec. 16, Ch. 291, L. 1969;
amd. Sec. 20, Ch. 431, L. 1971.

for "village"; substituted "qualified electors" for "freeholders"; and made minor changes in punctuation and style.

Amendments

The 1971 amendment substituted "town"

76-225. Hearing on petition to establish project area—report of supervisors—election on creation—filing notice of creation. Upon receipt of a petition to establish a project area the board or boards of supervisors shall cause due notice to be given of a public hearing on the petition. Prior to the hearing the board or boards of supervisors shall make, or cause to be made, an investigation of the need for establishment of the

proposed project area and shall prepare a report of their findings. The report shall be presented and read at the hearing on the petition. If the board, or boards, of supervisors finds that it is not feasible, desirable or practical to establish the proposed project area it shall make an order denying the petition and shall state therein its reasons for so doing. If, however, the board finds that the project is desirable, proper and necessary, it shall grant the petition, establish the boundaries of the proposed project area and give due notice of an election to be held in the proposed area for the purpose of determining whether or not the project area shall be created. The question shall be submitted to the electors by ballot on which the words "For creation of proposed project area" and "Against creation of proposed project area" shall appear, with a square before each proposition and directions to insert an "X" mark in the square before one or the other of said propositions as the voters may favor or oppose creation of the project area. No person shall be entitled to vote at the election unless such person possesses all the qualifications required of electors under Title 23, R. C. M. 1947, and resides within the boundaries of the proposed project area and the county in which he proposes to vote. If the majority of the votes cast at the election are in favor of creating a project area, the board, or boards, of supervisors shall create the project area and shall file with the county clerk and recorder in each county in which there lies a portion of the project area a notice of creation of the project area setting forth the purposes of the area and the boundaries thereof.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971.

Amendments

The 1971 amendment deleted "and excluding those lands that will not be so benefited" after "proposed project area"

in the fifth sentence; substituted the reference to Title 23 in the seventh sentence for "the general laws of the state"; substituted "resides" for "is the owner of taxable real property situated" in the seventh sentence; and made a minor change in phraseology.

76-226. Protests against proposed projects or creation of project area.

At any time within fifteen (15) days after the date of the last publication of the notice of the hearing on the petition, any owner of property liable to be assessed for the project may protest against the proposed project or the creation of the project area or both. The protest must be in writing and be delivered to the secretary of the conservation district who shall endorse thereon the date of its receipt by him. At the public hearing on the petition the board of supervisors shall proceed to hear and pass upon all protests made and its decision shall be final and conclusive; except when owners or [of] more than fifty per cent (50%) of the land in the proposed project area protest the project. If owners of more than fifty per cent (50%) of the land protest the project, no further action may be taken for a period of six (6) months from the date of the hearing after which a new petition may be filed.

History: En. Sec. 18, Ch. 291, L. 1969; amd. Sec. 22, Ch. 431, L. 1971.

Compiler's Notes

The bracketed word "of" near the end of the section has been inserted by the compiler.

Amendments

The 1971 amendment deleted "soil and water" before "conservation" in the second sentence; and made minor changes in style and punctuation.

76-227. Description of work or project area. In all resolutions, notices, orders and determinations, it shall be sufficient to briefly describe the work or the project area, or both.

History: En. Sec. 19, Ch. 291, L. 1969.

76-228. District area included in project area—administration of affairs. A project area may include a part or all of any district or may include areas in more than one (1) district. The affairs of a project area shall be administered by the board, or boards, of supervisors or their authorized agents.

History: En. Sec. 20, Ch. 291, L. 1969.

76-229. Estimates of expenses of project area—financing by assessments. When a project area has been created, the board, or boards, of supervisors shall estimate the expenses of the project area from the date of its establishment until the end of the ensuing fiscal year and before July 1, in each year thereafter shall estimate project area expenses for the fiscal year ensuing. Estimates of project area expenses may include revenue needed to pay the interest or principal of any bonded debt, costs of rights of way, easements, or other interest in property deemed necessary for the construction, operation and maintenance of any projects therein. The expense of the project area may, in the discretion of the board, or boards, of supervisors, be financed in whole from revenue received by regular assessments or by revenue received in part from regular assessments and in part from special assessments. Upon adoption of a budget covering necessary expenses, the board, or boards, of supervisors shall send a copy of such budget or apportionment thereof to the board of county commissioners and/or city auditor of each county and/or city in the project area. When the board, or boards, of supervisors has determined that a special assessment is necessary, the board of county commissioners of such county in which there lies any portion of a project area shall annually, at the time of levying county taxes, levy a special assessment of the taxable real property in the project area, not to exceed three (3) mills. It shall be known as the "..... (name of district) soil and water conservation district special assessment," and shall be sufficient to raise the income reported to them in the estimate of the supervisors. Each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all the lands to be assessed. Funds produced each year by this special tax levy shall be available until spent, and if this special tax levy in any year does not produce sufficient revenue to pay the project area expenses, a fund sufficient to pay the same may be accumulated. A special assessment to defray the expenses of a project area may be spread over a term of not to exceed forty (40) years.

History: En. Sec. 21, Ch. 291, L. 1969.

76-230. Federal authority unaffected. The provisions of this section shall not apply to the government of the United States or any department, bureau, or agency thereof, except to such extent as the government

of the United States or any department, bureau, or agency thereof may desire to take advantage of its provisions, it being the express purpose and intent of this section to aid but not to interfere with the government of the United States or of any department, bureau, or agency thereof in any undertaking over which such federal authority desires to exercise full supervision and control. The provisions of this section shall not be construed to impair, limit, or repeal any right whatsoever, which the government of the United States or any department, bureau, or agency thereof has to full and complete jurisdiction, management, or control over projects over which such federal authority desires to exercise such rights, it being the purpose of this section expressly to subordinate any power of jurisdiction and to never interfere directly with such federal authority.

History: En. Sec. 22, Ch. 291, L. 1969.

76-231. Special assessments a lien. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this act, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien against the property upon which such assessment is levied, and after the date levying such assessment, which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

History: En. Sec. 23, Ch. 291, L. 1969.

76-232. Assessments unaffected by misnomers and mistakes relating to ownership. When under the provisions of this act special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake, relating to the ownership thereof, shall affect such assessment or render it void or voidable.

History: En. Sec. 24, Ch. 291, L. 1969.

76-233. Duty to maintain improvements. Whenever any project petitioned for, or created by the state or federal government, has been made, built, constructed, erected or accomplished as in this act provided, it is hereby made the duty of the board, or boards, of supervisors, under whose jurisdiction the project area was created, to adequately and suitably maintain and preserve said improvements and fully to keep the same in proper repair and operation by contract or otherwise, in the way or manner as the board shall deem suitable and proper.

History: En. Sec. 25, Ch. 291, L. 1969.

TITLE 77—SOLDIERS, SAILORS AND MILITARY AFFAIRS

Chapter

1. Militia, composition, enrollment—officers, general provisions, Repealed—Section 73, Chapter 94, Laws of 1974.
2. Military courts, Repealed—Section 73, Chapter 94, Laws of 1974.
3. Articles governing militia, Repealed—Section 73, Chapter 94, Laws of 1974.
4. General provisions, Repealed—Section 73, Chapter 94, Laws of 1974.
5. Soldiers and sailors preference in public employment, 77-501.
11. Removal of disability of minority of veterans and spouses for benefits under Servicemen's Readjustment Act, Repealed—Section 73, Chapter 94, Laws of 1974.
12. Montana home guard, Repealed—Section 73, Chapter 94, Laws of 1974.
16. Militia—general provisions, 77-1601 to 77-1606.
17. Officers of militia, 77-1701 to 77-1708.
18. Enlisted members of militia, 77-1801 to 77-1804.
19. Military courts for militia, 77-1901 to 77-1908.
20. Property—pay and allowances—pensions—armories, 77-2001 to 77-2007.
21. Privileges of members of militia—unlawful acts, 77-2101 to 77-2108.
22. Home guard, 77-2201 to 77-2204.
23. Civil defense, 77-2301 to 77-2311.
24. Post-attack resource management, 77-2401 to 77-2406.
25. Vietnam veterans—honorarium or adjusted compensation, 77-2501 to 77-2511.

CHAPTER 1—MILITIA, COMPOSITION, ENROLLMENT—OFFICERS, GENERAL PROVISIONS

(Repealed—Section 73, Chapter 94, Laws of 1974)

77-101 to 77-163. (1330 to 1383) Repealed.

Repeal

Sections 77-101 to 77-163 (Secs. 1 to 5, 7 to 55, Ch. 191, L. 1919; Sec. 1, Ch. 99, L. 1927; Sec. 1, Ch. 160, L. 1937; Secs. 1 to 7, Ch. 89, L. 1943; Secs. 1, 2, Ch. 118, L. 1947; Sec. 1, Ch. 132, L. 1947; Sec. 1, Ch. 20, L. 1949; Sec. 1, Ch. 21, L. 1949; Sec. 1, Ch. 23, L. 1949; Sec. 1, Ch. 25, L. 1955; Sec. 1, Ch. 26, L. 1955; Secs. 1, 2, Ch.

272, L. 1959; Sec. 27, Ch. 97, L. 1961; Sec. 1, Ch. 74, L. 1963; Sec. 35, Ch. 177, L. 1965; Secs. 5, 6, Ch. 237, L. 1967; Sec. 32, Ch. 93, L. 1969; Sec. 1, Ch. 113, L. 1971; Sec. 16, Ch. 423, L. 1971; Sec. 1, Ch. 32, L. 1973), relating to the state militia and national guard, were repealed by Sec. 73, Ch. 94, Laws of 1974.

CHAPTER 2—MILITARY COURTS

(Repealed—Section 73, Chapter 94, Laws of 1974)

77-201 to 77-214. (1384 to 1397) Repealed.

Repeal

Sections 77-201 to 77-214 (Secs. 56 to 69, Ch. 191, L. 1919), relating to military

courts, were repealed by Sec. 73, Ch. 94, Laws of 1974.

CHAPTER 3—ARTICLES GOVERNING MILITIA

(Repealed—Section 73, Chapter 94, Laws of 1974)

77-301. (1398) Repealed.

Repeal

Section 77-301 (Sec. 70, Ch. 191, L. 1919), relating to articles governing the

militia, was repealed by Sec. 73, Ch. 94, Laws of 1974.

CHAPTER 4—GENERAL PROVISIONS

(Repealed—Section 73, Chapter 94, Laws of 1974)

77-401 to 77-420. (1399 to 1412) Repealed.**Repeal**

Sections 77-401 to 77-420 (Secs. 6, 71 to 83, Ch. 191, L. 1919; Sec. 1, Ch. 51, L. 1925; Sec. 1, Ch. 149, L. 1951; Sec. 1,

Ch. 70, L. 1955; Secs. 1 to 6, Ch. 168, L. 1955; Secs. 25, 26, Ch. 271, L. 1963), relating to the militia, were repealed by Sec. 73, Ch. 94, Laws of 1974.

CHAPTER 5—SOLDIERS AND SAILORS PREFERENCE IN
PUBLIC EMPLOYMENT

Section

77-501. Purpose of act—Definitions—preference.

77-501. (5653) Purpose of act—definitions—preference. The purpose of this act is to provide for preference of veterans, their unremarried widows, and dependents, and certain disabled civilians in appointment and employment in every public department and upon all public works of the state of Montana and of any county and city thereof.

(1) Definitions.

(a). The term “veterans” as herein used, means men and women who served in the armed forces of the United States, and who have been separated from such service upon conditions other than dishonorable, in time of war or declared national emergency as follows: the Civil War; the Spanish American War; the Philippine Insurrection; World War I, between April 6, 1917, and November 11, 1918, both dates inclusive; World War II, which term means such service between September 16, 1940, and December 31, 1946, both dates inclusive; the Korean War, military expedition, or police action, between June 26, 1950, and January 31, 1955, both dates inclusive; and those honorably discharged veterans who have served on active military duty for more than one hundred eighty (180) days after January 31, 1955, or who were discharged or released because of a service-connected disability, including, but not limited to, those veterans serving because of the Vietnam Conflict.

(b). * * * [Same as parent volume.]

(2) Preference to appointment and employment.

* * * [Same as parent volume.]

(3) Credit for examinations.

When written or oral examinations are required for employment as above described, disabled veterans and their wives, their unremarried widows, and other dependents of disabled veterans, shall have added to their examination ratings a credit of ten points, and all other veterans, their wives, unremarried widows, and dependents shall have added to their examination ratings a credit of five points; provided that the fact that an applicant has claimed a veterans' credit shall not be made known to the examiners until ratings of all applicants have been recorded; after which such credits shall be added to the examination rating and the records shall show the examination rating and the veteran's credit; provided further that the benefits of this subsection are in addition to and not in derogation

of the preference in appointment and/or employment given by subsection (2) hereof.

(4) Eligibility.

* * * [Same as parent volume.]

(5) Enforcement of preference.

* * * [Same as parent volume.]

History: En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1927; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969.

Amendments

The 1969 amendment, in subdivision (1), item (a), substituted "December 31, 1946" for "September 2, 1945" as terminal date for service in World War II and added "and those honorably discharged veterans * * * because of the Vietnam Conflict"; deleted former item (c), which read, "The word 'per centum' means per centum of the

total aggregate points of the examination hereinafter referred to"; and in subdivision (3), substituted "ten points" and "five points" for "ten per centum (10%)" and "five per centum (5%)" after "credit of."

Separability Clause

Section 2 of Ch. 193, Laws 1969 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 8—VETERANS' FREE TUITION AT UNIVERSITY OF MONTANA

Section

77-801. [Transferred.]

77-801. [Transferred.]

Compiler's Notes

Section 3, Ch. 94, Laws of 1974 renumbered this section as sec. 16-2927.

CHAPTER 9—VETERANS' FREE TUITION AT UNIVERSITY OF MONTANA

Section

77-901. [Transferred.]

77-909 to 77-911. [Transferred.]

77-901. [Transferred.]

Compiler's Notes

Section 4, Ch. 94, Laws of 1974 renumbered this section as sec. 75-8611.

77-909 to 77-911. [Transferred.]

Compiler's Notes

Sections 5 to 7, Ch. 94, Laws of 1974

renumbered these sections as secs. 75-8612 to 75-8614.

CHAPTER 10—VETERANS' WELFARE COMMISSION

Section

77-1002. [Transferred.]

77-1005 to 77-1007. [Transferred.]

77-1009, 77-1010. [Transferred.]

77-1001 SOLDIERS, SAILORS AND MILITARY AFFAIRS

77-1001. Repealed.

Repeal

Section 77-1001 (Sec. 1, Ch. 111, L. 1945), relating to creation of the vet-

erans' welfare commission, was repealed by Sec. 52, Ch. 121, Laws of 1974.

77-1002. [Transferred.]

Compiler's Notes

Section 37, Ch. 121, Laws of 1974 renumbered this section as sec. 71-2202.

77-1005 to 77-1007. [Transferred.]

Compiler's Notes

Sections 30, 39, 40, Ch. 121, Laws of

1974 renumbered these sections as secs. 71-2203 to 71-2205.

77-1008. Repealed.

Repeal

Section 77-1008 (Sec. 8, Ch. 111, L. 1945), relating to records and property of

the veterans' welfare commission, was repealed by Sec. 52, Ch. 121, Laws of 1974.

77-1009, 77-1010. [Transferred.]

Compiler's Notes

Sections 41, 42, Ch. 121, Laws of 1974

renumbered these sections as secs. 71-2206 and 71-2207.

77-1011. Repealed.

Repeal

Section 77-1011 (Sec. 3, Ch. 256, L. 1947), relating to on-the-job training of

veterans, was repealed by Sec. 52, Ch. 121, Laws of 1974.

CHAPTER 11—REMOVAL OF DISABILITY OF MINORITY OF VETERANS AND SPOUSES FOR BENEFITS UNDER SERVICEMEN'S READJUSTMENT ACT

(Repealed—Section 73, Chapter 94, Laws of 1974)

77-1101. Repealed.

Repeal

Section 77-1101 (Sec. 1, Ch. 13, L. 1947), relating to removal of disability of mi-

nority for veterans, was repealed by Sec. 73, Ch. 94, Laws of 1974.

CHAPTER 12—MONTANA HOME GUARD

(Repealed—Section 73, Chapter 94, Laws of 1974)

77-1201 to 77-1215. Repealed.

Repeal

Sections 77-1201 to 77-1215 (Secs. 1 to 15, Ch. 214, L. 1951), relating to the Mon-

tana home guard, were repealed by Sec. 73, Ch. 94, Laws of 1974.

CHAPTER 13—CIVIL DEFENSE

Section

77-1302 to 77-1304. [Transferred.]

77-1306 to 77-1313. [Transferred.]

77-1301. Repealed.**Repeal**

Section 77-1301 (Sec. 1, Ch. 218, L. 1951), relating to the short title of the

act, was repealed by Sec. 73, Ch. 94, Laws of 1974.

77-1302 to 77-1304. [Transferred.]**Compiler's Notes**

Sections 8 to 10, Ch. 94, Laws of 1974

renumbered these sections as secs. 77-2301 to 77-2303.

77-1305. Repealed.**Repeal**

Section 77-1305 (Sec. 5, Ch. 218, L. 1951), relating to the civil defense ad-

visory council, was repealed by Sec. 73, Ch. 94, Laws of 1974.

77-1306 to 77-1313. [Transferred.]**Compiler's Notes**

Sections 11 to 18, Ch. 94, Laws of 1974

renumbered these sections as secs. 77-2304 to 77-2311.

CHAPTER 15—POST-ATTACK RESOURCE MANAGEMENT**Section**

77-1502, 77-1503. [Transferred.]

77-1505 to 77-1508. [Transferred.]

77-1501. Repealed.**Repeal**

Section 77-1501 (Sec. 1, Ch. 297, L. 1967), relating to the short title of the

act, was repealed by Sec. 73, Ch. 94, Laws of 1974.

77-1502, 77-1503. [Transferred.]**Compiler's Notes**

Sections 19 and 20, Ch. 94, Laws of

1974 renumbered these sections as secs. 77-2401 and 77-2402.

77-1504. Repealed.**Repeal**

Section 77-1504 (Sec. 4, Ch. 297, L. 1967), relating to the state emergency re-

source planning committee, was repealed by Sec. 73, Ch. 94, Laws of 1974.

77-1505 to 77-1508. [Transferred.]**Compiler's Notes**

Sections 21 to 24, Ch. 94, Laws of 1974

renumbered these sections as secs. 77-2403 to 77-2406.

CHAPTER 16—MILITIA—GENERAL PROVISIONS**Section**

77-1601. Definitions.

77-1602. Classes of militia.

77-1603. Federal regulations to govern.

77-1604. Rules by governor.

77-1605. Proclamation of martial rule.

77-1606. Powers and duties of department of military affairs.

77-1601. Definitions. Unless the context requires otherwise, in Title 77:

(1) "Militia" means all the military forces of this state, whether organized or active or inactive.

(2) "National guard" means the army national guard and the air national guard.

(3) "Officer" means commissioned or warrant officer.

History: En. 77-1601 by Sec. 25, Ch. 94,
L. 1974.

77-1602. Classes of militia. The classes of the militia are:

(1) The organized militia, which consists of the national guard and the Montana home guard;

(2) The unorganized militia, which consists of the members of the militia who are not members of the organized militia.

History: En. 77-1602 by Sec. 2, Ch. 94,
L. 1974.

77-1603. Federal regulations to govern. Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the militia, including the Uniform Code of Military Justice, shall, insofar as they are applicable and not inconsistent with the constitution of this state, apply to and govern the military forces of this state.

History: En. 77-1603 by Sec. 27, Ch. 94,
L. 1974.

77-1604. Rules by governor. The governor may prescribe rules to carry out his functions and duties under this title, and the constitution of this state. These rules must conform to any applicable federal laws and regulations.

History: En. 77-1604 by Sec. 28, Ch. 94,
L. 1974.

77-1605. Proclamation of martial rule. When the militia is employed in aid of civil authority, the governor may by proclamation, declare any part of a county or municipality in which troops are serving to be subject to martial rule.

History: En. 77-1605 by Sec. 29, Ch. 94,
L. 1974.

77-1606. Powers and duties of department of military affairs. Under the direction of the governor, the department of military affairs provided for in Title 82A, chapter 14 shall:

(1) Keep a roster of all active, inactive, retired officers and enlisted persons of the militia of this state;

(2) Supervise, administer, and co-ordinate civil defense and disaster control activities;

(3) Recruit, mobilize, administer, train, discipline, equip, and supply the organized militia;

(4) Maintain the archives, and keep the records and documents required, by law or regulation, to be filed with the United States department of defense;

(5) Supervise, administer, and co-ordinate the activities of the selective service system for which the governor is responsible;

(6) Establish and maintain the headquarters required for the militia;

(7) Exercise the powers vested in it, and perform any other duty and function required of it by the governor, and by federal and state laws and regulations.

History: En. 77-1606 by Sec. 30, Ch. 94,
L. 1974.

CHAPTER 17—OFFICERS OF MILITIA

Section

- 77-1701. Officers.
- 77-1702. Oath of office.
- 77-1703. Retirement of officers.
- 77-1704. Resignation of officers.
- 77-1705. Vacating commissions or warrants.
- 77-1706. Examination as to fitness.
- 77-1707. Uniform allowance for officers.
- 77-1708. Officer need not vacate civil office.

77-1701. Officers. (1) The governor shall appoint all officers of the militia.

(2) Officers must be citizens of the United States.

(3) Before a person can be appointed an officer by the governor, he shall be examined and adjudged qualified to be an officer by an examining board. The composition, appointment, and examination procedure of the board, and the nature and scope of examinations, shall be prescribed by federal law or regulation, or state regulations.

(4) Each officer shall hold office under his appointment until he is regularly appointed to another grade or office, or until he is regularly retired, discharged, dismissed, or placed in the reserve.

History: En. 77-1701 by Sec. 31, Ch. 94,
L. 1974.

77-1702. Oath of office. (1) Except when a comparable oath is subscribed to under federal law or regulation, every officer shall take and subscribe to the following oath of office: "I, _____, do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the president of the United States and the governor of the state of Montana; that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of _____ in the _____ upon which I am about to enter, so help me God."

(2) If an officer refuses or neglects to take the oath, he shall be considered to have resigned the office, and a new appointment shall be made.

History: En. 77-1702 by Sec. 32, Ch. 94,
L. 1974.

77-1703. Retirement of officers. (1) An officer of the national guard shall be retired by order of the governor, for the following reasons:

- (a) Upon reaching his sixtieth (60) birthday; or
- (b) His unfitness for military service because of a physical disability.
- (2) An officer is retired with the grade and rank held by him at the time of retirement.

History: En. 77-1703 by Sec. 33, Ch. 94,
L. 1974.

77-1704. Resignation of officers. An officer may resign, but the resignation is not effective until it has been accepted by the governor.

History: En. 77-1704 by Sec. 34, Ch. 94,
L. 1974.

77-1705. Vacating commissions or warrants. The commission or warrant of an officer shall be vacated:

- (1) Upon acceptance by the governor of the resignation of the officer; or
- (2) By an order of the governor discharging the officer for:
 - (a) Failure to maintain his qualifications for federal recognition;
 - (b) The scheduled or actual termination or withdrawal of his federal recognition where federal recognition is a prerequisite for continued service;
 - (c) A change in federal reserve status which makes him ineligible to continue assigned to a unit of the organized militia;
 - (d) His absence from duty without leave for more than three (3) months; or
 - (e) Under the recommendation of a board of examination or the sentence of a court-martial.

History: En. 77-1705 by Sec. 35, Ch. 94,
L. 1974.

77-1706. Examination as to fitness. (1) The governor, when he considers it necessary, may order an officer to appear before a board of examination. The board of examination shall consist of three (3) officers, senior in rank to the officer whose fitness for service is under examination. The board may:

(a) Inquire into the fitness for military service due to physical disability of an officer under section 77-1703 (1)(b).

(b) Inquire into the moral character, capacity, and professional fitness of an officer in order to make a recommendation under section 77-1705 (2)(e).

(2) The board, under section 77-1703 (1)(b), may recommend the retention of the officer being examined, or his retirement because of a physical inability to perform active service.

(3) The board, under section 77-1705 (2)(e), may recommend the discharge and the vacating of his commission or warrant.

(4) The findings of the board become effective only upon the approval of the governor.

History: En. 77-1706 by Sec. 36, Ch. 94,
L. 1974.

77-1707. Uniform allowance for officers. (1) Every officer of the organized militia shall, within sixty (60) days from the date of the order whereby he is appointed, provide himself, at his own expense, with the uniforms and equipment prescribed by the department for his rank and assignment.

(2) There shall be paid annually on April 1, a uniform allowance to each properly uniformed and equipped officer of the organized militia.

History: En. 77-1707 by Sec. 37, Ch. 94,
L. 1974.

77-1708. Officer need not vacate civil office. A person may be an officer in the militia or in a reserve component of the armed forces of the United States without vacating a civil office or position in this state.

History: En. 77-1708 by Sec. 38, Ch. 94,
L. 1974.

CHAPTER 18—ENLISTED MEMBERS OF MILITIA

Section

- 77-1801. Terms of enlistment.
- 77-1802. Oath of enlistment.
- 77-1803. Extension of terms of service.
- 77-1804. Retirement of enlisted members.

77-1801. Terms of enlistment. Except as otherwise provided by federal law or regulation, enlistments, re-enlistments, and extension of enlistments shall be for periods as prescribed by the department.

History: En. 77-1801 by Sec. 39, Ch. 94,
L. 1974.

77-1802. Oath of enlistment. (1) Except when a comparable oath of enlistment is subscribed to under federal law or regulation, every person who enlists or re-enlists shall take and subscribe to the following oath of enlistment: "I hereby acknowledge to have voluntarily enlisted this _____ day of _____ in the _____ of the United States and the state of Montana for a period of _____ years under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America and to the state of Montana, and that I will serve them honestly and faithfully against all their enemies, and that I will obey the orders of the president of the United States, the governor of the state of Montana, and the officers appointed over me."

(2) Any commissioned officer of the organized militia, or any commissioned officer of the armed forces of the United States detailed to duty with any component of the organized militia of this state, may administer the oath of enlistment to enlisted men.

History: En. 77-1802 by Sec. 40, Ch. 94,
L. 1974.

77-1803. Extension of terms of service. If an emergency is declared by the president, congress, the governor, or the legislature, the governor may by proclamation, in accordance with federal and state law and regulation,

extend the enlistment of an enlisted member of the organized militia until six (6) months after the termination of that emergency.

History: En. 77-1803 by Sec. 41, Ch. 94,
L. 1974.

77-1804. Retirement of enlisted members. An enlisted member of the national guard shall be retired by order of the governor, for the following reasons:

- (1) Upon reaching his sixtieth (60) birthday, or
- (2) His unfitness for military service because of a physical disability.

History: En. 77-1804 by Sec. 42, Ch. 94,
L. 1974.

CHAPTER 19—MILITARY COURTS FOR MILITIA

Section

- 77-1901. Courts—composition, jurisdiction, powers, and procedures.
- 77-1902. Persons subject.
- 77-1903. Territorial applicability.
- 77-1904. Persons authorized to execute process.
- 77-1905. Confinement of persons committed by military court.
- 77-1906. Reporter and witness fees.
- 77-1907. Fees of civil officers, records.
- 77-1908. Trial by civil authority; when authorized.

77-1901. Courts—composition, jurisdiction, powers, and procedures. The military courts for the militia shall be constituted like similar courts of the armed forces of the United States. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures of those courts. The convening authority for these military courts, and maximum punishments authorized shall be as prescribed by federal and state law and regulation applicable to the national guard.

History: En. 77-1901 by Sec. 43, Ch. 94,
L. 1974.

77-1902. Persons subject. All members of the organized militia, and all other persons lawfully called, ordered, or drafted for duty in the organized militia from the dates they are required by the terms of the call, order, or other directive to serve, are subject to this chapter.

History: En. 77-1902 by Sec. 44, Ch. 94,
L. 1974.

77-1903. Territorial applicability. (1) This chapter is applicable in all places in this state. It also applies to all persons while serving outside this state and while going to and returning from service outside this state.

(2) Courts-martial and courts of inquiry may be convened and held in units of the organized militia while serving outside this state. These courts serve with the same jurisdiction and powers as if held in this state. Offenses committed outside this state may be tried and punished either in or out of this state.

History: En. 77-1903 by Sec. 45, Ch. 94,
L. 1974.

77-1904. Persons authorized to execute process. All processes, writs, warrants, and sentences of military courts shall be directed to and executed by any sheriff, or any officer or member of the police department of any county or municipality. These documents shall be in the same form as processes, writs, or warrants issued by civil courts. All officers to whom a process, writ, or warrant is directed shall execute them and make return thereof to the officer issuing them.

History: En. 77-1904 by Sec. 46, Ch. 94,
L. 1974.

77-1905. Confinement of persons committed by military court. The keepers of a municipal or county jail shall receive a person committed to them by a military court, and shall confine them in accordance with the direction of the court.

History: En. 77-1905 by Sec. 47, Ch. 94,
L. 1974.

77-1906. Reporter and witness fees. A witness subpoenaed to appear before a military court shall receive the same fee as provided by law for witnesses appearing in a civil court. The reporter of a court shall be paid for stenographic services the same as are provided by law for similar services in civil courts.

History: En. 77-1906 by Sec. 48, Ch. 94,
L. 1974.

77-1907. Fees of civil officers, records. Fees for services of civil officers shall be the same as provided by law for services in civil courts. Records of all fees, costs, and disbursements shall be kept in the headquarters of the organization concerned.

History: En. 77-1907 by Sec. 49, Ch. 94,
L. 1974.

77-1908. Trial by civil authority; when authorized. In a case where the offense charged is also an offense against civil authority, the convening authority of a court martial may, upon request of the civil authorities, order the person charged to be turned over to the appropriate civil authorities of this state for trial.

History: En. 77-1908 by Sec. 50, Ch. 94,
L. 1974.

CHAPTER 20—PROPERTY—PAY AND ALLOWANCES—PENSIONS—ARMORIES

Section

- 77-2001. Property remains public property.
- 77-2002. Organized militia called into service—general fund.
- 77-2003. Pay and allowances.
- 77-2004. Allowances for incidental expenses.
- 77-2005. Pensions—benefits.
- 77-2006. Armories.
- 77-2007. Lease of real property for armories, etc.

77-2001. Property remains public property. All property issued to organizations and members of the organized militia remains public property.

History: En. 77-2001 by Sec. 51, Ch. 94,
L. 1974.

77-2002. Organized militia called into service—general fund. When the organized militia is ordered into active duty as provided for in article VI, section 13 of the constitution of this state, warrants for pay and expenses shall be drawn upon the general fund of the state.

History: En. 77-2002 by Sec. 52, Ch. 94,
L. 1974.

77-2003. Pay and allowances. (1) An officer ordered into active duty as provided for in article VI, section 13 of the constitution of this state, shall receive pay and allowances as prescribed for an officer of corresponding grade and length of service when on active duty in federal service.

(2) An enlisted member ordered into active duty as provided for in article VI, section 13 of the constitution of this state, shall receive pay at rates equivalent to twice those allowed for an enlisted member of corresponding grade and length of time when on active duty in federal service. This schedule of pay for enlisted members applies only to the first fifteen (15) days of service. After fifteen (15) days, an enlisted member shall receive the pay and allowances as prescribed for an enlisted member of corresponding grade when on active duty in federal service.

(3) The pay and allowances provided for in this section may not be paid when pay and allowances for the active duty are provided out of federal funds.

History: En. 77-2003 by Sec. 53, Ch. 94,
L. 1974.

77-2004. Allowances for incidental expenses. Each commanding officer may receive an allowance for the incidental expenses of his command.

History: En. 77-2004 by Sec. 54, Ch. 94,
L. 1974.

77-2005. Pensions—benefits. (1) A member of the organized militia who is wounded, disabled, or dies while on duty in the service of this state shall receive the same benefits that would have been received if the member had been in federal service. However, no benefits may be granted or paid to a member if the member receives a similar benefit from the federal government for the injuries or death sustained while on duty.

History: En. 77-2005 by Sec. 55, Ch. 94,
L. 1974.

77-2006. Armories. (1) A county, city, or town may convey or lease real property to the state for armories or other military facilities.

(2) A county, city, or town in which a unit of the national guard is organized and regularly stationed may provide any part of the funds to build an armory. The armory must be of sufficient size, and suitable for the drill of the unit.

History: En. 77-2006 by Sec. 56, Ch. 94,
L. 1974.

77-2007. Lease of real property for armories, etc. The department of military affairs may lease real property for armories or other military facilities.

History: En. 77-2007 by Sec. 57, Ch. 94,
L. 1974.

CHAPTER 21—PRIVILEGES OF MEMBERS OF MILITIA—UNLAWFUL ACTS

Section

- 77-2101. Actions against members of the organized militia.
- 77-2102. Right of way while performing military duty.
- 77-2103. Depriving members of the organized militia of employment.
- 77-2104. Leave of absence of state employees attending training camp or similar training program.
- 77-2105. Authority of commanding officer.
- 77-2106. Trespassers and disturbers may be placed in arrest.
- 77-2107. Unlawful sale or detention of military property.
- 77-2108. Unlawful wearing of uniform.

77-2101. Actions against members of the organized militia. When an action is commenced in a court against a member of the organized militia for an act done in his official capacity in the discharge of his duty, or for an alleged omission to do an act which it was his duty to perform, the defendant shall be defended by the attorney general at the expense of this state, but private counsel may be employed by the defendant.

History: En. 77-2101 by Sec. 58, Ch. 94,
L. 1974.

77-2102. Right of way while performing military duty. (1) The commanding officer of a unit of the organized militia parading or performing any military duty in a street or highway may require all persons on the street or highway to yield the right of way to troops. Motor vehicles traveling in military convoy shall be accorded the right of way on all streets and highways.

(2) The exercise of the right of way provided for in this section may not interfere with the carriage of the United States mail, or with the progress of an ambulance, or members of a police or fire department.

(3) A person who violates this section is guilty of a misdemeanor.

History: En. 77-2102 by Sec. 59, Ch. 94,
L. 1974.

77-2103. Depriving members of the organized militia of employment. (1) A person may not willfully deprive a member of the organized militia of his employment or prevent his being employed, or obstruct or annoy a member in respect to his trade, business, or employment, because he is a member of the organized militia.

(2) A person may not dissuade any person from enlisting in the organized militia, by threatening to injure, or injuring his business, employment, or trade.

(3) A person who violates this section is guilty of a misdemeanor.

History: En. 77-2103 by Sec. 60, Ch. 94,
L. 1974.

77-2104. Leave of absence of state employees attending training camp or similar training program. A state, city, or county employee who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States, and who has been an employee for a period of six (6) months, shall be given leave of absence with pay for a period of time not to exceed fifteen (15) working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States. This leave may not be charged against the employee's annual vacation time.

History: En. 77-2104 by Sec. 61, Ch. 94,
L. 1974.

77-2105. Authority of commanding officer. The commanding officer at any drill, parade, encampment, or other duty may order those under his command to perform any military duty he requires. The commanding officer may arrest, for the time of the drill, parade, encampment, or other duty, an officer or enlisted man who disobeys the orders of his superior officer.

History: En. 77-2105 by Sec. 62, Ch. 94,
L. 1974.

77-2106. Trespassers and disturbers may be placed in arrest. (1) The commanding officer may arrest or authorize the arrest of a person who trespasses upon a camp or parade ground, armory, arsenal, rifle range, or any other place devoted to or used for military purposes.

(2) The commanding officer may arrest a person who interrupts, molests, or disturbs the orderly discharge of duty by those under arms, disturbs or prevents the passage of troops going to or returning from any duty, or assaults a member of the uniformed militia while that member is performing any military duty.

(3) A person who is arrested under this section shall be transferred to the civil authorities in the county where the offense was committed.

(4) A person violating this section is guilty of a misdemeanor.

History: En. 77-2106 by Sec. 63, Ch. 94,
L. 1974.

77-2107. Unlawful sale or detention of military property. A person may not conceal, sell, dispose of, offer for sale, purchase, retain after demand made by an officer, or in any manner pledge or pawn any arms, equipment, or other military property issued by the United States or this state for use of the militia. A person violating this section is guilty of a misdemeanor.

History: En. 77-2107 by Sec. 64, Ch. 94,
L. 1974.

77-2108. Unlawful wearing of uniform. A person may not wear the uniform or insignia issued or authorized for use by the organized militia, who is not a member of the organized militia. A person violating this section is guilty of a misdemeanor.

History: En. 77-2108 by Sec. 65, Ch. 94,
L. 1974.

CHAPTER 22—HOME GUARD

Section

- 77-2201. Organization and composition.
77-2202. Governor may prescribe rules.
77-2203. Use of armories and equipment.
77-2204. Pay—allowances—pensions—benefits.

77-2201. Organization and composition. The home guard may be organized, maintained, and disbanded at the discretion of the governor, in accordance with federal law and regulation, when additional defense forces are needed in this state. The home guard shall be composed of officers assigned to it, and any able-bodied citizen of this state who volunteers to serve in it. If additional persons are needed in the home guard, members of the unorganized militia shall serve if enrolled by draft or otherwise as provided by law and regulation.

History: En. 77-2201 by Sec. 66, Ch. 94,
L. 1974.

77-2202. Governor may prescribe rules. The home guard shall be organized, armed, equipped, maintained, disciplined, governed, administered, and trained under rules prescribed by the governor. These rules shall conform to federal law and regulations.

History: En. 77-2202 by Sec. 67, Ch. 94,
L. 1974.

77-2203. Use of armories and equipment. The governor may make available to the home guard the facilities of state armories and their equipment and any other state land and property as may be available. The governor may requisition from the federal government for the use of the home guard, arms, ammunition, clothing, equipment, and other items in accordance with federal law and regulations. The governing body of a county, municipality, or school district may make available to the home guard any premises, facilities, equipment, or other property belonging to or under the control of the county, municipality, or school district.

History: En. 77-2203 by Sec. 68, Ch. 94,
L. 1974.

77-2204. Pay—allowances—pensions—benefits. (1) An officer or member of the home guard on active duty in the service of this state shall receive the same pay and allowances as prescribed for officers and enlisted members of the militia under section 77-2003.

(2) A member of the home guard who is wounded, disabled, or dies while on active duty in the service of this state, shall receive the same pensions and benefits as prescribed for members of the organized militia under section 77-2005.

History: En. 77-2204 by Sec. 69, Ch. 94,
L. 1974.

CHAPTER 23—CIVIL DEFENSE

Section

- 77-2301. Policy and purpose.
77-2302. Definitions.
77-2303. Responsibility for civil defense.

- 77-2304. Civil defense duties of the governor.
- 77-2305. Duties of department.
- 77-2306. Mutual-aid arrangements.
- 77-2307. Local organization for civil defense.
- 77-2308. Immunity from liability.
- 77-2309. Authority to accept services, gifts, grants, and loans.
- 77-2310. Political activity prohibited.
- 77-2311. Civil defense personnel.

77-2301. Policy and purpose. Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action, and natural disasters, and in order to ensure that preparation of this state will be adequate to deal with such disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state, it is hereby found and declared to be necessary:

(1) To authorize the creation of local organizations for civil defense in the political subdivisions of the state; and

(2) To provide for the rendering of mutual aid among the political subdivisions of the state, and with other states, and with the federal government with respect to carrying out of civil defense functions.

History: En. Sec. 2, Ch. 218, L. 1951; amd. Sec. 1, Ch. 220, L. 1953; Sec. 77-1302, R. C. M. 1947; amd. and redes. 77-2301 by Sec. 8, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this section; deleted "To create a state civil defense agency" from the beginning of subdivision (1); and made minor changes in punctuation.

77-2302. Definitions. As used in this chapter the term "civil defense" means the preparation for and the carrying out of emergency functions, other than functions for which military forces or other federal agencies are primarily responsible, to prevent, minimize, and repair injury and damage resulting from disasters caused by enemy attack, sabotage, or other hostile action, and catastrophes of all types which shall endanger any community in the state, or the lives or property of the inhabitants thereof, including storms, floods, explosions, earthquakes, epidemics, and fires. These functions include fire-fighting services, police services, medical and health services, rescue, engineering, air raid warning services, communications, radiological, chemical and other special weapons of defense, evacuation of persons from stricken areas, emergency welfare services (civilian war aid), emergency transportation, plant protection, temporary restoration of public utility services, and other functions related to civilian protection. The term "political subdivisions" means the counties, cities, towns and villages in this state.

History: En. Sec. 3, Ch. 218, L. 1951; amd. Sec. 2, Ch. 220, L. 1953; Sec. 77-1303, R. C. M. 1947; amd. and redes. 77-2302 by Sec. 9, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "this chapter" for "this act" in the first sentence; and made minor changes in phraseology and punctuation.

77-2303. Responsibility for civil defense. (a) The department of military affairs is responsible to the governor for carrying out the program for

civil defense of this state. The department shall co-ordinate the activities of all organizations for civil defense within the state, and maintain liaison with and co-operate with civil defense agencies and organizations of other states, of the federal government, and Canada, and have any additional authority, duties, and responsibilities authorized by this chapter as may be prescribed by the governor.

(b) In providing assistance under this chapter, state agencies shall co-operate to the fullest extent possible with each other and with local governments, relief agencies, and the American National Red Cross, but nothing contained in this chapter limits or in any way affects the responsibilities of the American National Red Cross under the act approved January 5, 1905 (33 Stat. 559), as amended.

History: En. Sec. 4, Ch. 218, L. 1951; amd. Sec. 3, Ch. 220, L. 1953; amd. Sec. 7, Ch. 237, L. 1967; Sec. 77-1304, R. C. M. 1947; amd. and redes. 77-2303 by Sec. 10, Ch. 94, L. 1974.

relating to creation of the state civil defense agency and appointment of a director; substituted "department of military affairs" and "department" for references to the director; substituted "this chapter" for "this act" throughout the section; and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment renumbered this section; deleted the first three subsections

77-2304. Civil defense duties of the governor. The governor is responsible for carrying out this chapter. The governor shall utilize the services and facilities of the existing officers and agencies of the state, and all officers and agencies shall co-operate with and extend their services and facilities to the governor as he may request in the carrying out of the purposes of this chapter.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R. C. M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974.

section; deleted reference to the governor having control of the civil defense agency; substituted "this chapter" for "this act"; and made minor changes in phraseology.

Amendments

The 1974 amendment renumbered this

77-2305. Duties of department. The department shall:

(1) Prepare a comprehensive plan and program for the civil defense of this state. This plan and program shall be integrated into and co-ordinated with the civil defense plans of the federal government, other states, and Canada, to the fullest possible extent, and to co-ordinate the preparation of plans and programs for civil defense by the political subdivisions of this state.

(2) Sponsor and develop mutual aid plans and agreements between the political subdivisions of the state, similar to the mutual-aid arrangements with other states referred to above.

(3) In accordance with the plan and program for the civil defense of this state, ascertain the requirements of the state or the political subdivisions thereof for food or clothing or other necessities of life in the event of attack and plan for the procurement of supplies, medicine, materials, and equipment that may be necessary. It shall make surveys of the industries, resources and facilities within the state as are necessary to carry out the purposes of this act. It shall institute training programs and public informa-

tion programs, and take all other preparatory steps, including the partial or full mobilizations of civil defense organizations in advance of actual disaster, to ensure the furnishing of adequately trained and equipped forces of civil defense personnel in time of need.

History: En. Sec. 7, Ch. 218, L. 1951; Sec. 77-1307, R. C. M. 1947; amd. and redes. 77-2305 by Sec. 12, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology, punctuation and style.

77-2306. Mutual-aid arrangements. (1) The director of each local organization of civil defense may develop or cause to be developed mutual-aid arrangements, with other public and private agencies within this state for reciprocal civil defense aid and assistance in case of disaster too great to be dealt with unassisted. These arrangements shall be consistent with the state civil defense plan and program, and in time of emergency each local organization for civil defense shall render assistance in accordance with the provisions of the mutual-aid arrangements.

(2) The director of each local organization for civil defense may assist in negotiation of reciprocal mutual-aid agreements between the governor and the adjoining states (including foreign states or provinces) or political subdivisions thereof, and shall carry out arrangements or any such agreements or any such agreement relating to the local and political subdivision.

History: En. Sec. 8, Ch. 218, L. 1951; Sec. 77-1308, R. C. M. 1947; amd. and redes. 77-2306 by Sec. 13, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology and style.

77-2307. Local organization for civil defense. (1) Each political subdivision of this state shall establish a local organization for civil defense in accordance with the state civil defense plan and program. The executive officer or governing body of the political subdivisions may appoint a director who shall have direct responsibility for the organization, administration, and operation of the local organization for civil defense, subject to the direction and control of the executive officer or governing body. Each local organization for civil defense shall perform civil defense functions within the territorial limits of the political subdivisions within which it is organized.

(2) Each political subdivision shall:

(a) Direct and co-ordinate the development of civil defense plans and programs in accordance with the policies and plans set by the federal civil defense agency and the department of military affairs;

(b) Appoint, employ, remove, or provide without compensation, voluntary air raid wardens, rescue teams, auxiliary fire and police personnel, and other civilian defense workers;

(c) Establish a primary and one or more secondary control centers to serve as command posts during an emergency;

(d) Budget for and appropriate funds for the local administration of this chapter and local civil defense organizations.

History: En. Sec. 9, Ch. 218, L. 1951; R. C. M. 1947; amd. and redes. 77-2307 by amd. Sec. 4, Ch. 220, L. 1953; Sec. 77-1309, Sec. 14, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department of military affairs" for reference to the state

civil defense agency in subdivision (2)(a); substituted "this chapter" for "this act" in subdivision (2)(b); and made minor changes in phraseology, punctuation and style.

77-2308. Immunity from liability. (1) Neither the state nor any political subdivision of the state, nor the agents or representatives of the state or any political subdivision thereof, shall be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer civilian defense worker, or member of any agency engaged in civilian defense activity. This section does not affect the right of any person to receive benefits or compensation to which he might otherwise be entitled under the workmen's compensation law or any pension law or any act of Congress.

(2) Neither the state nor any political subdivision of the state, nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any political subdivision thereof, nor any volunteer or auxiliary civilian defense worker or member of any agency engaged in civilian defense activity, nor the owners of facilities used for civil defense shelters, pursuant to a fallout shelter license or privilege agreement and while complying with or reasonably attempting to comply with this chapter, or any order, rule, or regulation promulgated under the provisions of this chapter, or pursuant to any ordinance relating to blackout or other precautionary measures enacted by any political subdivisions of the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity.

History: En. Sec. 10, Ch. 218, L. 1951; Sec. 77-1310, R. C. M. 1947; amd. and redes. 77-2308 by Sec. 15, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this section; inserted "nor the owners of facilities used for civil defense shelters, pur-

suant to a fallout shelter license or privilege agreement and while" after "any agency engaged in civilian defense activity" near the middle of subsection (2); substituted "this chapter" for "this act" in subsection (2); and made minor changes in phraseology.

77-2309. Authority to accept services, gifts, grants, and loans. Whenever the federal government or any agency or officer thereof, or any person, firm, or corporation shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of civil defense, the state, acting through the governor, or the political subdivision, acting through its executive officer or governing body, may accept the offer and upon the acceptance the governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive the services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

History: En. Sec. 11, Ch. 218, L. 1951; Sec. 77-131, R. C. M. 1947; amd. and redes. 77-2309 by Sec. 16, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made minor changes in style.

77-2310. Political activity prohibited. An organization for civil defense established under this chapter may not participate in any form of political activity, nor may it be employed directly or indirectly for political purposes.

History: En. Sec. 12, Ch. 218, L. 1951;
Sec. 77-1311, R. C. M. 1947; amd. and
redes. 77-2311 by Sec. 17, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "this chapter" for "this act"; and made minor changes in phraseology.

77-2311. Civil defense personnel. A person may not be employed or associated in any capacity in any civil defense organization established under this chapter who advocates a change by force or violence in the constitutional form of the government of the United States or in this state or the overthrow of any government in the United States by force or violence, or who has been convicted of or is under indictment or information charging any subversive act against the United States. Each person who is appointed to serve in an organization for civil defense shall, before entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in this state, which oath shall be substantially as follows:

"I, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the constitution of the State of Montana, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter. And I do further swear (or affirm) that I do not advocate nor am I a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence; and that during such time as I am a member of the Montana civil defense agency I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence."

History: En. Sec. 13, Ch. 218, L. 1951;
Sec. 77-2311, R. C. M. 1947; amd. and
redes. 77-2311 by Sec. 18, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "this chapter" for "this act" in the first paragraph; and made minor changes in phraseology.

CHAPTER 24—POST-ATTACK RESOURCE MANAGEMENT

Section

77-2401. Legislative findings—policy of state.

77-2402. Definition of terms.

77-2403. Governor's powers and duties under act.

77-2404. Proclamation of emergency—governor's powers during emergency.

77-2405. Judicial inquiry as to emergency proclamation and facts.

77-2406. Penalty for violation of rules and regulations.

77-2401. Legislative findings—policy of state. (1) The legislature recognizes that an attack upon the United States is a possibility; that such attack might be of unprecedented size and destructiveness; that a considerable period of time may elapse after an attack before federal operational control over the management of resources can be instituted; and that

federal planning and activities with respect to post-attack recovery and rehabilitation necessarily are predicated on the ability of the states and their political subdivisions to prepare for, and respond promptly to, the problems created by an attack. Therefore, it is hereby found and declared to be necessary to confer upon the governor and upon the executive heads of governing bodies of political subdivisions of this state the emergency powers provided for in this chapter.

(2) It is further declared to be the purpose of this chapter and the policy of this state that all resource management functions of this state be co-ordinated to the maximum extent with the comparable functions of the federal government, of other states and localities, and of private agencies to the end that the most effective preparation and use may be made of available manpower, resources, and facilities in an emergency.

History: En. Sec. 2, Ch. 297, L. 1967; Sec. 77-1502, R. C. M. 1947; amd. and redes. 77-2401 by Sec. 19, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this section; deleted "To create an office of

emergency resource management for the execution of a plan for emergency resource management" after "declared to be necessary" near the end of subsection (1); substituted "this chapter" for "this act" in subsection (2); and made minor changes in phraseology and style.

77-2402. Definition of terms. Unless the context requires otherwise, in this chapter:

(1) "Emergency Resources Management Plan" means that plan prepared by the department of military affairs, approved by the federal office of emergency planning, and adopted by the governor, which sets forth the organization, administration, and functions for the emergency management by the state government of essential resources and economic stabilization within the state. The plan shall provide an emergency organization and emergency administrative policies and procedures for the conservation, allocation, distribution, and use of essential resources available to the state following a civil defense emergency such as an attack upon the United States. It shall be supplemental to the national plan for emergency preparedness adopted by the president of the United States, and shall become operative upon the establishment of a civil defense emergency. To the extent that the federal government is either incapable of or not prepared to conduct its emergency resources management program, the state plan will substitute for and replace the federal program until such time as the federal program becomes effective in the state.

(2) "Enemy attack" means an actual attack by a foreign nation by hostile air raids, or other forms of warfare, upon this state or any other state or territory of the United States.

(3) "Political subdivision" means any county, city, town, or township of the state.

History: En. Sec. 3, Ch. 297, L. 1967; Sec. 77-1503, R. C. M. 1947; amd. and redes. 77-2402 by Sec. 20, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "this chapter" for

"this act" in the introductory sentence; substituted "department of military affairs" for "state emergency resources planning committee" in the first sentence of subdivision (1); and made minor changes in phraseology.

77-2403. Governor's powers and duties under act. (1) The governor has general direction and control of the emergency resources management within this state and all officers, boards, agencies, individuals, or groups established under the emergency resource management plan.

(2) In performing his duties under this chapter, the governor may cooperate with the federal government, with other states, and with private agencies in all matters pertaining to the emergency management of resources.

(3) In performing his duties under this chapter, and to effect its policies and purpose, the governor may make, amend, and rescind the necessary orders, rules, and regulations to carry out this chapter within the limits of authority conferred upon him herein, with due consideration of the emergency resources management plans of the federal government.

History: En. Sec. 5, Ch. 297, L. 1967; Sec. 77-1505, R. C. M. 1947; amd. and redes. 77-2403 by Sec. 21, Ch. 94, L. 1974.

Amendments

* The 1974 amendment renumbered this section; substituted "this chapter" for "this act" throughout the section; and made minor changes in phraseology.

77-2404. Proclamation of emergency—governor's powers during emergency. (1) Following an attack, the governor, if he finds such action necessary to deal with the danger to the public safety caused thereby or to aid in the post-attack recovery or rehabilitation of the United States or any part thereof, shall declare by proclamation the existence of a post-attack recovery and rehabilitation emergency. Any such proclamation shall be ineffectual, unless the legislature is then in session or the governor simultaneously issues an order convening the legislature in special session within forty-five (45) days.

(2) During the period when the proclamation issued under subsection (1) of this section is in force, or during the continuance of any emergency declared by the president of the United States or the congress calling for post-attack recovery and rehabilitation activities, subject to the limitations set forth in this chapter, and in a manner consistent with any rules, regulations, or orders and policy guidance issued by the federal government, the governor may issue, amend, and enforce rules, regulations, and orders to:

(a) Control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price-fixing, allocation or other means, the use, sale or distribution of food, feed, fuel, clothing and other commodities, materials, goods or services;

(b) Prescribe and direct activities in connection with but not limited to use, conservation, salvage, and prevention of waste of materials, services, and facilities, including production, transportation, power, and communication facilities, training and supply of labor, utilization of industrial plants, health and medical care, nutrition, housing, including the use of existing and private facilities, rehabilitation, education, welfare, child care, recreation, consumer protection, and other essential civil needs; and

(c) Take such other action as may be necessary for the management of resources following an attack.

(3) All rules, regulations, and orders issued under authority conferred

by this chapter have the effect of law during the continuance of a proclamation or declaration of emergency as contemplated by this section, when a copy of the rule, regulation, or order is filed in the office of the secretary of state or, if issued by a local or area official, when filed in the office or offices of the county clerk and recorder. If, by reason of destruction or disruption attendant upon or resulting from attack, the filing requirements of this subsection cannot be met, public notice by such means as may be available shall be considered a complete and sufficient substitute. All existing laws, ordinances, rules, regulations, and orders inconsistent with the provisions of this chapter, or any rule, regulation or order issued under the authority thereof, shall be inoperative during the period of time and to the extent such inconsistency exists.

(4) Any authority exercised under a proclamation or emergency contemplated by this section may be exercised with respect to the entire territory over which the governor or other official, as the case may be, has jurisdiction, or as to any specified part thereof.

(5) The governor's power and authority to issue a proclamation following an attack shall be terminated by the passage of a joint resolution of the legislature or by declaration of the termination of the emergency by the president or by the congress; however the proclamation shall terminate automatically six (6) months after issuance and a similar proclamation may not be issued unless concurrence is given thereto by a joint resolution of the legislature.

History: En. Sec. 6, Ch. 297, L. 1967; Sec. 77-1506, R. C. M. 1947; amd. and redes. 77-2404 by Sec. 22, Ch. 94, L. 1974.

section; substituted "this chapter" for "this act" throughout the section; and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment renumbered this

77-2405. Judicial inquiry as to emergency proclamation and facts. Every proclamation and the facts related in the proclamation issued under this chapter is subject to judicial inquiry by the state supreme court as to the existence of the facts underlying the issuance of the proclamation and whether the action was reasonable under the circumstances.

History: En. Sec. 7, Ch. 297, L. 1967; Sec. 77-1507, R. C. M. 1947; amd. and redes. 77-2405 by Sec. 23, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "this chapter" for "this act"; and made minor changes in phraseology.

77-2406. Penalty for violation of rules and regulations. A person violating any of the rules, regulations or orders adopted and promulgated under section 77-2404 shall, upon conviction, be subject to a fine of not to exceed ten thousand dollars (\$10,000) or to a term of imprisonment of not to exceed five (5) years, or both.

History: En. Sec. 8, Ch. 297, L. 1967; Sec. 77-1508, R. C. M. 1947; amd. and redes. 77-2406 by Sec. 24, Ch. 94, L. 1974.

section; substituted "under section 77-2404" for "under section 6 [77-1506]"; and made minor changes in phraseology and style.

Amendments

The 1974 amendment renumbered this

CHAPTER 25—VIETNAM VETERANS—HONORARIUM OR ADJUSTED
COMPENSATION

Section

- 77-2501. Definitions.
- 77-2502. Purpose—honorarium granted.
- 77-2503. Procedure when death occurs before payment.
- 77-2504. Application for payment.
- 77-2505. Application by guardian.
- 77-2506. Deadline for applications.
- 77-2507. Contents of application.
- 77-2508. Rules and regulations—law to be construed liberally.
- 77-2509. Assistance by state and county officials.
- 77-2510. Right to payment not subject to legal process.
- 77-2511. Authority for necessary supplies.

77-2501. Definitions. Terms used in this law have the meanings stated in this section unless the context clearly requires otherwise:

(1) "Vietnam War" means the period between January 1, 1961, and March 31, 1973.

(2) "Vietnam area" means the countries of Vietnam, Laos, Cambodia, and Thailand and the waters surrounding them.

(3) "Military forces" mean the United States army, navy, marine corps, air force, coast guard, and all other groups, branches, and services forming a part of the armed services under the control and subject to the discipline of the department of defense of the United States.

(4) "Military service" means service on active duty for other than training purposes by any person in any of the military forces at any time during the Vietnam War.

(5) "Person" means any man or woman.

(6) "Serviceman" means a person entitled to receive payments under section 2 [77-2502] of this law.

(7) "Resident of Montana" means a person who at the time of his entry into the military service had his residence in Montana. A person who on January 1, 1961, was serving on active duty in any of the military forces, and who at the time of his then last entry into such service made his home in Montana, and who was in the military service at some time during the Vietnam War, shall be deemed a resident of Montana unless, after such last entry and before entry into military service in such war, he had established and was then maintaining residence in some other state; and any such serviceman whose parents or surviving parent then resided in Montana shall be deemed a resident of Montana.

(8) "United States" means the area of the fifty (50) states and the District of Columbia, to high-water mark on their water boundaries.

(9) "Board" means the board of examiners.

History: En. 77-2301 by Sec. 1, Ch. 288, L. 1974.

Title of Act

An act to provide for the payment of an

honorarium or adjusted compensation to each resident of Montana in military service in the Vietnam area during the Vietnam War between January 1, 1961, and March 31, 1973.

77-2502. Purpose—honorarium granted. (1) In recognition and appreciation of the valor and devotion of the persons who by their military

service discharged the obligation of the state of Montana to contribute from its manpower to the defense of the republic in the prosecution of the Vietnam War, and in partial adjustment for the economic detriment suffered by them by reason of their service, the state of Montana hereby grants to each such person an honorarium, or adjusted compensation, in a sum to be computed as provided in this section.

(2) Each resident of Montana who was in military service at any time during the Vietnam War, and during part or all of the period of such service was in the Vietnam area, is granted the sum of eighteen dollars and seventy-five cents (\$18.75) for each month and major fraction of a month of such service in the Vietnam area. For the purpose of this subdivision:

(a) any serviceman who, while on active duty in the Vietnam area during the Vietnam War, suffered disease or injury from any cause whatsoever, including injury from exposure to weather conditions, and in line of duty, and is hospitalized therefor by any of the military forces, shall be deemed to have been in military service in the Vietnam area as long as he shall be or was continuously hospitalized in any hospital or similar institution under the control of or employed by the United States, wherever situated;

(b) any serviceman who was taken prisoner by the enemy in the Vietnam area, and who was classified by the department of defense as a prisoner of war, shall be deemed to have been in military service in the Vietnam area as long as he shall be or was continuously so classified; but

(c) each such prisoner of war shall be paid not less than seven hundred fifty dollars (\$750), and no serviceman shall be paid, under any of the provisions of this subdivision, more than seven hundred fifty dollars (\$750).

(3) The surviving spouse, children, or parents, as the case may be, of any serviceman who shall have died in line of duty while in military service in the Vietnam area during the Vietnam War, or who shall have died from any cause attributable to his military service, in the Vietnam area in line of duty, as shown by the records of the United States veterans administration, prior to receiving a payment under this section, or who is officially listed as missing in action, shall be paid the amount to which such deceased or missing serviceman would have been entitled had he received such payment, or if that amount is less than seven hundred fifty dollars (\$750), then such surviving spouse, children, or parents, as the case may be, shall be paid the sum of seven hundred fifty dollars (\$750) and no more.

(4) Notwithstanding any other provisions of this law:

(a) a person who has received or is entitled to receive from any other state or territory of the United States a gratuity, bonus, honorarium, adjusted compensation, or similar payment for military service in the military forces in the Vietnam War, shall be paid by the state of Montana only the excess, if any, of the aggregate amount to which he would otherwise be entitled hereunder, over and above the amount he receives or is entitled to receive from such other state or territory; and

(b) no payment shall be made under this law to any person who has been dishonorably discharged from military service and has not been restored by proper authority to an honorable status, or to any person still

in service who is in a dishonorable status and has not been restored by proper authority to an honorable status at the time of payment.

History: En. 77-2302 by Sec. 2, Ch. 288,
L. 1974.

77-2503. Procedure when death occurs before payment. (1) In the case of death of any serviceman before payment under this law, the amount granted to him in section 2 [77-2502] shall be paid as follows:

(a) to his surviving spouse, provided such spouse has not remarried before making application for payment; or

(b) if there is no surviving spouse, or the spouse has remarried before making such application, then to the serviceman's child or children who shall be living when the payment is made, in equal shares if more than one, and all thereof if only one; or

(c) if there is no surviving spouse who has not remarried and there are no surviving children, the payment shall be made to the parents of the serviceman, or if one of them is deceased, then the whole to the parent who survives, or if both parents are deceased, then no payment shall be made.

(2) The payments provided in this section shall be made only to persons living at the time of payment, and no payment shall be made to the estate of any person.

History: En. 77-2303 by Sec. 3, Ch. 288,
L. 1974.

77-2504. Application for payment. All payments provided for in sections 2 [77-2502] and 3 [77-2503] of this law shall be made upon applications made by claimants in the form prescribed by this law, to be filed with the state board of examiners. The board shall pass upon all applications and upon the proof offered in support thereof, and upon the approval of any application by the board it shall file the same with the state auditor, who shall immediately issue to such applicant a warrant upon the general fund in the amount allowed by the board and make personal delivery of such warrant to the applicant, or mail the same to the applicant at the current address shown in the application.

History: En. 77-2304 by Sec. 4, Ch. 288,
L. 1974.

77-2505. Application by guardian. In the case of a minor or incompetent person, a claim shall be filed by and payment made to his guardian or his custodian duly appointed by the veterans administration.

History: En. 77-2305 by Sec. 5, Ch. 288,
L. 1974.

77-2506. Deadline for applications. All applications for the payment of grants under this law shall be filed on or before July 1, 1976, with the board of examiners or with a county clerk and recorder of any county of this state. Upon receiving any such application, the clerk and recorder shall give the applicant a receipt therefor, stating therein the exact time of such

filing, and shall immediately endorse the fact and time of filing upon the application, over his signature and seal, and immediately transmit the application to the board of examiners. Any filing at a place and within the time specified in this section shall preserve the rights of the applicant to the grant, notwithstanding any defect in his application, provided that any such defects are later corrected under reasonable rules to be adopted by the board of examiners.

History: En. 77-2306 by Sec. 6, Ch. 288,
L. 1974.

77-2507. Contents of application. (1) All applications by servicemen shall contain:

- (a) the full name of the applicant;
- (b) the then address of the applicant;
- (c) the date and place of birth of the applicant;
- (d) the name under which the applicant served in the military forces;
- (e) the date of beginning and the date of ending military service;
- (f) the date of beginning and the date of ending military service in the Vietnam area;
- (g) the date and place where applicant was discharged from active service, or if still on active duty, the name of the organization in which he is then serving;
- (h) applicant's residence at the time of entry into military service;
- (i) the selective service office in which applicant was registered;
- (j) whether applicant has received or is entitled to receive an honorarium or similar payment from any other state or territory of the United States, and if so, the amount thereof; and
- (k) such reasonable documentation as the board shall require.

(2) Applications by children or parents of a deceased serviceman shall contain all the information concerning such serviceman as required in an application by such serviceman, so far as obtainable by such applicant, and the necessary facts upon which the applicant claims the right to such payment.

(3) The board of examiners shall cause to be printed an ample supply of application forms, and shall furnish to each clerk and recorder in Montana an adequate supply of such application forms.

(4) Any person who, with intent to defraud, subscribes to any false oath or makes any false representation, either in the application herein provided for or in the proof offered in support thereof, for the purpose of obtaining payment hereunder when he is in fact not entitled to such payment, shall be guilty of the offense of false swearing and punishable accordingly.

History: En. 77-2307 by Sec. 7, Ch. 288,
L. 1974.

77-2508. Rules and regulations—law to be construed liberally. The board of examiners shall adopt all necessary rules and regulations for handling applications for the payments herein provided for, and for the adjudication of questions of fact and of law arising upon such applications, and

may accept and consider any form of evidence, including affidavits and other forms of evidence tending to establish claims with reasonable certainty, although not in form admissible in a civil action, it being the intent of this law that it shall be administered liberally to the end that no person entitled to payment hereunder shall be denied it, so far as reasonably possible.

History: En. 77-2308 by Sec. 8, Ch. 288,
L. 1974.

77-2509. Assistance by state and county officials. The attorney general, the state director of the veterans' welfare commission, the employees of said commission, and all other state and all county officers shall render without charge all assistance possible to the board of examiners in the administration of this law, and to applicants for payment in the preparation of applications and making proof thereunder.

History: En. 77-2309 by Sec. 9, Ch. 288,
L. 1974.

77-2510. Right to payment not subject to legal process. The right to receive payment of the honorarium or adjusted compensation herein provided for shall not be assignable, may not be pledged, mortgaged, or otherwise encumbered, and shall not be subject to attachment or to levy under execution or other judicial process.

History: En. 77-2310 by Sec. 10, Ch.
288, L. 1974.

77-2511. Authority for necessary supplies. The state board of examiners is authorized and directed to procure such printing and office supplies and equipment, and to employ such persons, at such compensation, as shall be determined by the board of examiners to be necessary in order to carry out properly the provisions of this law, and all expenses incurred by the board in the administration of this law shall be paid by the state auditor by warrants drawn upon the general fund.

History: En. 77-2311 by Sec. 11, Ch.
288, L. 1974.

TITLE 78—STATE CAPITOL

Chapter

9. Future building needs, 78-910.
10. Employment security commission buildings, 78-1011 to 78-1030.
11. Insurance on state buildings, 78-1101 to 78-1103.
12. Reconstruction and repair of public buildings and capitol building in Helena—
construction of supreme court and law library building, 78-1201 to 78-1209.
13. Capitol building and planning committee, 78-1301 to 78-1304.

CHAPTER 3—VETERANS' MEMORIAL MONEYS

78-302. Expenditure of veterans' memorial moneys.

Compiler's Notes

Section 98, Ch. 326, Laws 1974, substituted "department of administration" in

this section for "state controller" and "controller."

CHAPTER 7—STATE CAPITOL REPAIR AND RECONSTRUCTION

78-738. Employment of architects and engineers.

Cross-References

Board of examiners continued in department of administration, sec. 82A-206.

CHAPTER 9—FUTURE BUILDING NEEDS

Section

78-910. Scheduling of state building program.

78-910. Scheduling of state building program. The department of administration shall, by careful advance planning, ordering of construction priorities, consultation with architects, and timing of bid lettings, direct the building program of the state in such a manner as to reduce to a minimum the effects of weather on construction and to stabilize as far as possible the work opportunities of the construction labor force.

History: En. Sec. 1, Ch. 116, L. 1967; to stabilize the work opportunities of the
amd. Sec. 98, Ch. 326, L. 1974. construction labor force.

Title of Act

An act to require the state controller to schedule the state's building program in such a manner as to minimize the importance of weather on construction and

Amendments

The 1974 amendment substituted "department of administration" at the beginning of this section for "state controller."

CHAPTER 10—EMPLOYMENT SECURITY COMMISSION BUILDINGS

Section

- 78-1011. Bond issue authorized for construction of addition to building.
- 78-1012. Architect—employment—construction and design.
- 78-1013. Bids—contractor's bond.
- 78-1014. Amount of bonds authorized.
- 78-1015. Interest rate—term—other provisions of bonds.
- 78-1016. Sale of bonds—registration.
- 78-1017. Payment of principal and interest.
- 78-1018. Employment security commission building interest and sinking fund.

- 78-1019. Purchase of bonds by board of land commissioners.
- 78-1020. Budget act not applicable.
- 78-1021. Bond issue authorized for erection of additional office buildings.
- 78-1022. Architect—employment—construction and design.
- 78-1023. Bids—contractor's bond.
- 78-1024. Amount of bonds authorized.
- 78-1025. Interest rate—term—other provisions of bonds.
- 78-1026. Sale of bonds—registration.
- 78-1027. Payment of principal and interest.
- 78-1028. Employment security commission building interest and sinking fund.
- 78-1029. Purchase of bonds by board of land commissioners.
- 78-1030. Budget act not applicable.

78-1001. Bond issue authorized, etc.

Cross-References

Name of commission changed, sec. 87-117.

78-1011. Bond issue authorized for construction of addition to building. The state board of examiners of the state of Montana is hereby authorized to issue and sell bonds for the purpose of constructing an addition to the employment security commission office building presently existing on the capitol building grounds, adjacent to the capitol building, namely on lots 9 through 24, inclusive in Block 20 of the Corbin addition to the city of Helena, County of Lewis and Clark, Helena, Montana, and for the purpose of landscaping and paving around said building.

History: En. Sec. 1, Ch. 418, L. 1971.

Title of Act

An act to provide for the issue and sale by the state board of examiners of bonds for the purpose of constructing an addition to the employment security commission building located on the capitol building grounds; designating the funds from which said bonds shall be paid; provid-

ing for an employment security commission building interest and sinking fund; enumerating the powers and duties of the state board of examiners in carrying out the provisions of this act; authorizing the state land board to purchase said bonds with moneys from the long-term investment funds; providing a savings clause; and providing an effective date.

78-1012. Architect—employment—construction and design. Upon the sale of the bonds, the state board of examiners is hereby empowered and directed to employ an architect to prepare plans and specifications, and to proceed with the constructing of an addition to the presently existing employment security commission building on the state capitol grounds, said addition to be used as office facilities by the employment security commission within the limitations prescribed by the United States department of labor, manpower administration and the United States secretary of labor.

History: En. Sec. 2, Ch. 418, L. 1971.

78-1013. Bids—contractor's bond. The state board of examiners shall call for bids for the construction of, and for the landscaping and paving around said addition to the employment security building, and let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require the contractor to give bond to the state of Montana in such amount as the board may determine, conditioned for the faithful performance of his duties and contract.

History: En. Sec. 3, Ch. 418, L. 1971.

78-1014. Amount of bonds authorized. The aggregate amount of bonds authorized by this act for the purpose of herein expressed shall not exceed the sum of four hundred ninety-nine thousand dollars (\$499,000).

History: En. Sec. 4, Ch. 418, L. 1971.

78-1015. Interest rate—term—other provisions of bonds. Bonds issued and sold by the state board of examiners under authority of this act shall bear interest at the current and prevailing interest rate, said interest to be payable semiannually. They shall be either amortization or serial bonds, shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding twenty (20), as said board may specify. All bonds shall be optional and redeemable five (5) years after the date of issue and on any interest payment date thereafter, at the option of the state board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana. The coupons attached to said bonds may bear the facsimile signature of the members of said board.

History: En. Sec. 5, Ch. 418, L. 1971.

78-1016. Sale of bonds—registration. Said bonds shall be sold by the state board of examiners at such time, in such manner, and in such amounts as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds.

History: En. Sec. 6, Ch. 418, L. 1971.

78-1017. Payment of principal and interest. The principal and interest of the bonds authorized by this act shall be payable out of the following funds and from them only: All money credited to this state's account in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to Section 903 of the Social Security Act, as amended, and all money received from the United States secretary of labor and authorized for payment to provide office space for the central offices of the employment security commission at Helena, Montana, immediately following use of said addition to said building upon completion of erection, pursuant to Title III of the Social Security Act, as amended, shall be, and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by this act to the extent said money may be sufficient to pay the same; provided said bonds shall be issued and sold by said state board of examiners as herein provided only for the total sum or amount necessary to be raised in excess of such total of all balances or sums that may be accrued

and available from said sources for erection of said building a total of four hundred ninety-nine thousand dollars (\$499,000).

History: En. Sec. 7, Ch. 418, L. 1971.

78-1018. Employment security commission building interest and sinking fund. To provide for the payment of the interest and principal of the bonds authorized by this act, there is hereby created a special fund to be known as the employment security commission building interest and sinking fund, into which fund shall be paid all the sums of money hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds and the erection of said addition to the employment security building including the landscaping and paving around it.

History: En. Sec. 8, Ch. 418, L. 1971.

78-1019. Purchase of bonds by board of land commissioners. The state board of land commissioners is hereby authorized to purchase the bonds provided for by this act with moneys from the long-term investment fund notwithstanding the provisions of sections 81-1001 and 81-1006 of the Revised Codes of Montana, 1947.

History: En. Sec. 9, Ch. 418, L. 1971.

78-1020. Budget act not applicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

History: En. Sec. 10, Ch. 418, L. 1971.

Separability Clause

Section 11 of Ch. 418, Laws 1971 read "Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be

deemed to affect any other section or part hereof."

Effective Date

Section 12 of Ch. 418, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 18, 1971.

78-1021. Bond issue authorized for erection of additional office buildings. The state board of examiners of the state of Montana is hereby authorized to issue and sell bonds for the purpose of purchasing land, landscaping and paving said land as is necessary and for the purpose of erecting employment security commission office buildings in the following locations:

Employment security commission (employment service building), Great Falls, Montana.

Employment security commission (employment service building), addition, Billings, Montana.

Employment security commission (employment service building), Missoula, Montana.

Employment security commission (employment service building), Helena, Montana.

History: En. Sec. 1, Ch. 419, L. 1971.

Title of Act

An act to provide for the issue and sale

by the state board of examiners of long-term bonds for the purpose of erecting employment security commission office buildings within the state of Montana,

designating the funds from which said bonds shall be paid; providing for employment security commission interest and sinking funds; enumerating the powers and duties of the state board of examiners in carrying out the provisions of this act;

authorizing the state land board to purchase said bonds with moneys from the long-term investment funds; providing a savings clause; and providing an effective date.

78-1022. Architect—employment—construction and design. Upon the sale of the bonds, the state board of examiners is hereby empowered and directed to employ architects to prepare plans and specifications, and to proceed with the erection of buildings of suitable construction and design for use as employment security commission buildings within the limitations prescribed by the United States department of labor, manpower administration and the United States secretary of labor.

History: En. Sec. 2, Ch. 419, L. 1971.

78-1023. Bids—contractor's bond. The state board of examiners shall call for bids for the construction of said buildings and for the landscaping and paving around them, and let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require each prime contractor to give bond to the state of Montana in such amount as the board may determine, conditioned for the faithful performance of his duties and contracts.

History: En. Sec. 3, Ch. 419, L. 1971.

78-1024. Amount of bonds authorized. The aggregate amount of bonds authorized by this act for the purpose herein expressed shall not exceed the sum of one million fifty-five thousand nine hundred and twenty-eight dollars (\$1,055,928).

History: En. Sec. 4, Ch. 419, L. 1971.

78-1025. Interest rate—term—other provisions of bonds. Bonds issued and sold by the state board of examiners under authority of this act shall bear interest at the prevailing rate payable annually. They shall be either amortization or serial bonds, shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding twenty (20), as said board may specify. All bonds shall be optional and redeemable five (5) years after the date of issue and on any interest payment date thereafter, at the option of the state board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana.

History: En. Sec. 5, Ch. 419, L. 1971.

78-1026. Sale of bonds—registration. Said bonds shall be sold by the state board of examiners at such time, in such manner, and in such amounts as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds

shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds.

History: En. Sec. 6, Ch. 419, L. 1971.

78-1027. Payment of principal and interest. The principal and interest of the bonds authorized by this act shall be payable out of the following funds and from them only: All money credited to this state's account in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the Social Security Act, as amended, and all money received from the United States secretary of labor and authorized for payment to provide office space for the central offices of the employment security commission at Helena, Montana, immediately following occupancy of said buildings upon completion of erection, pursuant to Title III of the Social Security Act, as amended, shall be, and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by this act to the extent said money may be sufficient to pay the same; provided said bonds shall be issued and sold by said state board of examiners as herein provided only for the total sum or amount necessary to be raised in excess of such total of all balances or sums that may be accrued and available from said sources for erection of said building a total of one million fifty-five thousand nine hundred and twenty-eight dollars (\$1,055,928).

History: En. Sec. 7, Ch. 419, L. 1971.

78-1028. Employment security commission building interest and sinking fund. To provide for the payment of the interest and principal of the bonds authorized by this act, there is hereby created a special fund to be known as the employment security commission building interest and sinking fund, into which fund shall be paid all the sums of money hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds and the erection of said buildings including the landscaping and paving around them.

History: En. Sec. 8, Ch. 419, L. 1971.

78-1029. Purchase of bonds by board of land commissioners. The state board of land commissioners is hereby authorized to purchase the bonds provided for by this act with moneys from the long-term investment fund notwithstanding the provisions of sections 81-1001 and 81-1006, R. C. M. 1947.

History: En. Sec. 9, Ch. 419, L. 1971.

Compiler's Notes

Sections 81-1001 and 81-1006 mentioned

in this section were repealed by Sec. 9, Ch. 298, Laws 1973. See repeal note under Chapter 81-10 in this supplement.

78-1030. Budget act not applicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the Budget Act.

History: En. Sec. 10, Ch. 419, L. 1971.

deemed to affect any other section or part hereof."

Separability Clause

Section 11 of Ch. 419, Laws 1971 read "Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be

Effective Date

Section 12 of Ch. 419, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 18, 1971.

CHAPTER 11—INSURANCE ON STATE BUILDINGS

Section

- 78-1101. Insurance on state buildings—use of proceeds.
- 78-1102. Deductible insurance plan for state buildings and contents.
- 78-1103. Administration of deductible insurance plan.

78-1101. Insurance on state buildings—use of proceeds. (1) Moneys received by the state as indemnification for damage to state buildings, except buildings procured by the department of highways by purchase or condemnation for right of way purposes, shall be deposited in the bond proceeds and insurance clearance fund. These moneys may only be:

(a) to (c) * * * [Same as parent volume.]

(2) * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 110, L. 1963; amd. Sec. 23, Ch. 326, L. 1974.

partment of highways" in the first sentence of the section for "state highway commission."

Amendments

The 1974 amendment substituted "de-

78-1102. Deductible insurance plan for state buildings and contents. A deductible plan of insurance may be established for use by the state in insuring state buildings and their contents.

History: En. Sec. 1, Ch. 86, L. 1971.

insurance for state buildings and their contents.

Title of Act

An act to provide a deductible plan of

78-1103. Administration of deductible insurance plan. The administration of this act shall be placed in the department of administration with the co-operation of the insurance commissioner.

History: En. Sec. 2, Ch. 86, L. 1971.

CHAPTER 12—RECONSTRUCTION AND REPAIR OF PUBLIC BUILDINGS AND CAPITOL BUILDING IN HELENA—CONSTRUCTION OF SUPREME COURT AND LAW LIBRARY BUILDING

Section

- 78-1201. Borrowing of state funds authorized.
- 78-1202. Employment of architects and engineers—approval of plans and specifications.
- 78-1203. Acquisition of land—bids and contracts—bonds.
- 78-1204. Maximum borrowing power—deposit of moneys.
- 78-1205. Terms of bonds, indentures, and notes.
- 78-1206. Sale of bonds, indentures, and notes—registration and accounts.
- 78-1207. Funds available for repayment of obligations.
- 78-1208. Moneys deposited in sinking fund.
- 78-1209. Budget act inapplicable.

78-1201. Borrowing of state funds authorized. In order to provide for land acquisition for public buildings at the state capitol; the reconstruction, improvement, remodeling, repair and furnishing of the state capitol building of the state of Montana at Helena, Montana; for the construction of a supreme court building and state library building, the state board of examiners of the state of Montana is authorized to borrow sums of money from time to time from the unpledged investment funds available to any state agency or division of government, and to issue bonds, indentures or notes therefor.

History: En. Sec. 1, Ch. 375, L. 1969.

Title of Act

An act authorizing the state board of examiners to borrow up to two million dollars (\$2,000,000) for land acquisition for public buildings at the state capitol; for the reconstruction, improvement, remodeling, repair and furnishing of the state capitol building of the state of Montana at Helena, Montana; for construction of a supreme court and law library building; providing for the issuance of bonds,

indentures and/or notes; dedicating income from capitol building land grant for repayment of loans; enumerating the power and duties of the state board of examiners in carrying out the provisions of this act; and providing for a select committee of the house of representatives and senate relating thereto.

Cross-References

Board of examiners continued in department of administration, sec. 82A-206.

78-1202. Employment of architects and engineers—approval of plans and specifications. With the approval of the state board of examiners, the department of administration shall employ an architect or architects, an engineer or engineers for the period of time the department considers proper to make the necessary studies and prepare complete plans and specifications for the purposes set forth in section 78-1201 to proceed with the reconstruction, improvement, remodeling, repair, and furnishing of the state capitol building and to proceed with the construction of the supreme court and law library building. The plans and specifications of the architect or architects, engineer, or engineers shall be approved by a select committee comprised of four (4) members of the house of representatives, not more than two (2) from either political party, appointed by the speaker; and four (4) members of the senate, not more than two (2) from either political party, appointed by the committee on committees.

History: En. Sec. 2, Ch. 375, L. 1969; amd. Sec. 24, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to the department of administration in the first sentence for references to the state controller; and made minor changes in punctuation and phraseology.

78-1203. Acquisition of land—bids and contracts—bonds. The board of examiners and the department of administration shall purchase or condemn the lands described in section 1 [78-1201] of this act upon the advice of the select committee. The state board of examiners shall call for bids for the construction of the supreme court building and the state library building, and for the reconstruction, improvement, remodeling, repair, and furnishing of the state capitol building and shall let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require the contractors to give bonds to the state of Montana in such amounts as the board may determine, conditioned for the faithful performance of their duties and contracts.

History: En. Sec. 3, Ch. 374, L. 1969;
amd. Sec. 98, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department of administration" at the beginning of this section for "state controller."

78-1204. Maximum borrowing power—deposit of moneys. The aggregate amount which the state board of examiners is authorized to borrow under this act for the purposes herein expressed shall not be in excess of the sum of two million dollars (\$2,000,000). All moneys borrowed or realized from the sale of bonds authorized by this act shall be deposited in the capitol building program account, bond proceeds and insurance clearance fund.

History: En. Sec. 4, Ch. 375, L. 1969.

78-1205. Terms of bonds, indentures, and notes. The bonds, indentures and/or notes issued by the state board of examiners under authority of this act shall not bear interest at a rate in excess of four and one-half per cent (4½%) per annum payable semiannually. They shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding twenty-five (25), as said board may specify. All bonds, indentures and/or notes shall be optional and redeemable at any time after the date of issue, at the option of the state board of examiners. Said bonds, indentures and/or notes shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana. Coupons attached to any such bonds may bear the facsimile signature of the members of said board.

History: En. Sec. 5, Ch. 375, L. 1969.

78-1206. Sale of bonds, indentures, and notes—registration and accounts. Said bonds, indentures and/or notes shall be sold by the state board of examiners at such time and in such manner as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds, indentures and/or notes shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds, indentures and/or notes.

History: En. Sec. 6, Ch. 375, L. 1969.

78-1207. Funds available for repayment of obligations. The principal and interest of the bonds, indentures and/or notes authorized by this act shall be payable out of the following fund and from it only: As much as may be necessary from the income received subsequent to January 1, 1970, from the capitol building land grant shall be, and the same is hereby dedicated and appropriated for the repayment of the principal and interest of the bonds, indentures and/or notes provided for by this act.

History: En. Sec. 7, Ch. 375, L. 1969.

78-1208. Moneys deposited in sinking fund. To provide for the payment of the interest and principal of the bonds, indentures and/or notes authorized by this act, all the sums of money hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds, indentures and/or notes shall be paid and deposited in the sinking fund in the state treasury.

History: En. Sec. 8, Ch. 375, L. 1969.

78-1209. Budget act inapplicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

History: En. Sec. 9, Ch. 375, L. 1969.

Separability Clause

Section 10 of Ch. 375, Laws 1969 read
"Every section of this act and every part
of each section is hereby declared to be

independent of each other, and the holding
of any section or part hereof to be void
or ineffective for any cause shall not be
deemed to affect any other section or part
hereof."

CHAPTER 13—CAPITOL BUILDING AND PLANNING COMMITTEE

Section

78-1301. Committee created—composition—meetings.

78-1302. Function of committee—factors to be considered in master plan.

78-1303. Report to legislature.

78-1304. Per diem and mileage.

78-1301. Committee created—composition—meetings. There is hereby created a committee to be composed of seven (7) members: two (2) members of the house of representatives, appointed by the speaker on a bipartisan basis; two (2) members of the senate, appointed by the committee on committees on a bipartisan basis; the director of administration; the chairman of the city-county planning board for the city of Helena and county of Lewis and Clark, and the secretary of state. A chairman shall be selected by the members. Meetings may be called by the chairman at his discretion.

History: En. Sec. 1, Ch. 232 L. 1971;
amd. Sec. 25, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "director of administration" in the first sentence for "state controller"; deleted from the end of the second sentence "at the first meeting which shall be on or about July 9, 1971"; and made minor changes in punctuation and phraseology.

Title of Act

An act to create a capitol building and planning committee, establishing functions and guidelines under the general supervision of this legislative council; and providing an immediate effective date.

78-1302. Function of committee—Factors to be considered in master plan. Function of the committee will be to establish a master plan for the orderly development of future state buildings in the state capitol area of the city of Helena, Montana. In evolving the master plan the committee shall take into consideration the following factors:

(a) The needs of the state relative to the location and design of buildings to be constructed, purchase of land, parking facilities, traffic management and landscaping, including placement of statues, monuments, fountains or exterior lighting of buildings as may be deemed desirable for the beautification of the area.

(b) The ordinances, plans, requirements and proposed improvements of the city of Helena and the county of Lewis and Clark, including but not limited to zoning regulations, population trends and plans for rapid transit development.

(c) Any other factors which bear upon the orderly, integrated and co-operative development of the state, the city of Helena and the county of Lewis and Clark, of property in the area of the state capitol.

History: En. Sec. 2, Ch. 232, L. 1971.

78-1303. Report to legislature. The committee shall prepare a written report of its activities and recommendations and present the report to the succeeding legislature, under the general supervision of the legislative council.

History: En. Sec. 3, Ch. 232, L. 1971.

78-1304. Per diem and mileage. Legislative members are entitled to twenty dollars (\$20) a day and mileage for days actually engaged in the work of the committee.

History: En. Sec. 4, Ch. 232, L. 1971.

Effective Date

Section 5 of Ch. 232, Laws 1971 pro-

vided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

TITLE 79—STATE FINANCE

Chapter

1. General fiscal duties of state auditor, 79-101, 79-102, 79-108, 79-109.
2. General fiscal duties of state treasurer, 79-201, 79-202, 79-211.
3. Deposit and investment of state funds, 79-301, 79-302, 79-305 to 79-311.
4. Treasury fund structure, 79-410, 79-413 to 79-415.
6. Perpetual appropriations for support of state institutions—contingent revolving accounts, 79-601 to 79-603.
10. State Budget Act, 79-1001, 79-1012 to 79-1018.
11. Purchase of state general fund warrants, 79-1101 to 79-1103, 79-1105.
12. Montana trust and legacy fund—unified investment plan, 79-1212, 79-1215.
20. Bond Validating Act, 79-2001 to 79-2004.
22. Long-range building program bonds, 79-2201 to 79-2205.
23. Legislative Audit Act, 79-2301, 79-2302, 79-2303.1, 79-2304, 79-2305, 79-2307 to 79-2312, 79-2314, 79-2315.
24. Reimbursement of general funds for cost of central services, 79-2409 to 79-2415.
25. Emergency and disaster fund, 79-2501 to 79-2503.
26. Interest on bonds and special assessments of political subdivisions, 79-2601 to 79-2603.

CHAPTER 1—GENERAL FISCAL DUTIES OF STATE AUDITOR

Section

- 79-101. State auditor—general fiscal duties.
79-102. Certificate of settlement.
79-108. Warrants—presentation—cancellation.
79-109. Issuance of duplicate warrant.

79-101. (151) State auditor—general fiscal duties. It is the duty of the state auditor:

1. To superintend the fiscal concerns of the state.
2. When requested, to give information in writing to either house of the legislative assembly relating to the fiscal affairs of the state or the duties of his office.
3. To suggest plans for the improvement and management of the public revenues.
4. To keep an account of all warrants drawn upon the treasurer, and such other account and appropriation records that he determines to be essential for the support of the accounting records maintained in the office of the department of administration.
5. To keep an account between the state and the state treasurer, and therein charge the state treasurer with the balance in the treasury when he came into office, and with all moneys, received by him, and credit him with all warrants drawn on and paid by him.
6. To keep a register of warrants, showing the fund upon which they are drawn, the number, in whose favor, and the date issued.
7. In his discretion to examine and settle the accounts of persons indebted to the state, and certify the amount to the treasurer, and upon presentation and filing of the treasurer's receipt therefor, to give such person a discharge and charge the treasurer therewith.

8. In his discretion to require any person presenting an account for settlement to be sworn before him, and to answer, orally or in writing, as to any facts relating to it.

9. To require all persons who have received any moneys belonging to the state, and have not accounted therefor, to settle their accounts.

10. In his discretion to inspect the books of any persons charged with the receipt, safekeeping, or disbursement of public moneys.

11. In his discretion to require all persons who have received moneys or securities, or have had the disposition or management of any property of the state of which an account is kept in his office, to render statements thereof to him; and all such persons must render statements at such times and in such form as he may require.

12. In his discretion to examine the collection of moneys due the state, and institute suits in its name for official delinquencies in relation to the assessment, collection, and payment of the revenue, and against persons who by any means have become possessed of public money or property, and failed to pay over or deliver the same, and against debtors of the state; of which suits the courts of the county in which the seat of government may be located have jurisdiction, without regard to the residence of the defendants.

13. In his discretion, to offset any amount due a state agency from a person or entity, against any amount owing such person or entity by any state agency. The state auditor may deduct from the claim, and draw his warrants for the amounts offset in favor of the respective state agencies to which due, and, for any balance, in favor of the claimant. Whenever insufficient to offset all amounts due state agencies, the amount available shall be applied in such manner as the state auditor, in his discretion, shall determine. If, in the discretion of the state auditor, the person or entity refuses or neglects to file his claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of such person or entity; if approved by the department of administration it shall have the same force and effect as though filed by such person or entity. The amount due any person or entity from the state or any agency thereof is the net amount otherwise owing such person or entity after any offset as in this section provided.

14. To draw warrants on the state treasurer for the payment of moneys directed by law to be paid out of the treasury; but no warrant must be drawn unless authorized by law.

15. To authenticate with his official seal all warrants drawn by him, and all copies of papers issued from his office.

16. In his discretion promulgate rules and regulations regarding the distribution and processing of warrants issued.

17. In his discretion establish a cost accounting system to determine the unit cost of issuing and processing warrants and provide for a system of charges for services rendered in issuing and processing warrants for claims submitted by any department or agency of the state. No such charge shall be made for warrants issued against the general fund. Funds collected under this section for budgeted programs shall be deposited to the

credit of the general fund. Funds collected for new or unforeseen programs may be deposited to the credit of a revolving fund account and expended for the purposes of paying the processing expenses incurred as a result of the new program.

18. To collect and pay into the state treasury all fees received by him.

19. To perform such other duties as are prescribed by law.

20. In his discretion to establish, under the joint control of the department of administration and the state auditor, a system of filing and storage of the original copy of claims paid by state warrant.

History: En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907; re-en. Sec. 151, R. C. M. 1921; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974. Cal. Pol. C. Sec. 433.

Amendments

The 1969 amendment deleted former subdivisions 2, 3, 6, 10, 18, and 19, for text of which see parent volume; redesignated former subdivisions 4 and 5 as 2 and 3; redesignated former subdivision 7 as 4 and substituted "and such other account * * * state controller" for "and a separate account under the head of each specific appropriation, showing at all times the unexpended balance of such appropriation"; redesignated former subdivision 8 as 5; redesignated former subdivision 9 as 6, and substituted "and the date issued" for "for what service, the appropriation applicable to the payment thereof, when the liability accrued, and a receipt from the person to whom the warrant is delivered"; redesignated former subdivision 11 as 7, and

inserted "In his discretion" at the beginning; redesignated former subdivisions 12 through 15 as 8 through 11; redesignated former subdivision 16 as 12, and substituted "In his discretion to examine" for "To direct and superintend" at the beginning and deleted "all" before "moneys" and "debtors"; inserted new paragraph 13; redesignated former subdivision 17 as 14, and deleted ", and upon an unexhausted specific appropriation provided by law to meet the same. Every warrant must be drawn upon the fund out of which it is payable, and specify the service for which it is drawn, when the liability accrued, and the specific appropriation applicable to the payment thereof"; redesignated former subdivision 20 as 15, and deleted "drafts and" before "warrants drawn"; inserted new subdivisions 16 and 17; redesignated former subdivisions 21 and 22 as 18 and 19; and added new subdivision 20.

The 1974 amendment substituted "department of administration" in subdivisions 4, 13, and 20 for "state controller."

79-102. (152) Certificate of settlement. The certificate mentioned in subdivision 7, of section 79-101, must show by whom the payment is to be made; the amount thereof, and the fund into which it is to be paid, and must be numbered in order, beginning with number 1 at the commencement of each fiscal year.

History: En. Sec. 421, Pol. C. 1895; re-en. Sec. 171, Rev. C. 1907; re-en. Sec. 152, R. C. M. 1921; amd. Sec. 2, Ch. 94, L. 1969. Cal. Pol. C. Sec. 434.

Amendments

The 1969 amendment substituted "subdivision 7" for "subdivision 11" before "of section 79-101."

79-104. (154) Order in which warrants must be drawn.

Compiler's Notes

Section 98, Ch. 326, Laws 1974, substituted "department of administration" in

this section for "state controller" and "controller."

79-107. Repealed.

Repeal

Section 79-107 (Sec. 427, Pol. C. 1895), relating to auditor's execution of an of-

ficial bond, was repealed by Sec. 5, Ch. 94, Laws 1969.

79-108. (158) Warrants — presentation — cancellation. All warrants drawn by the state auditor on the state treasury shall be presented for

payment within one (1) year after the date of the issue thereof. Should the payee or legal holder of any warrant fail to present it for payment within the time specified, the state auditor shall enter the same as canceled on the books of his office and the amount shall be credited to the account from which it was drawn. Should the payee or legal owner of any canceled warrant present it for payment, or in the event the warrant has been lost or destroyed, the payee present a claim for payment, after the lapse of one (1) year from the date of issue, the state auditor may, upon proper showing by affidavit, issue a new warrant in lieu thereof, and the state treasurer is authorized to pay the new warrant. The state auditor shall furnish the state treasurer with a list of warrants canceled under the provisions of this section.

History: En. Sec. 1, Ch. 80, L. 1907; Sec. 178, Rev. C. 1907; re-en. Sec. 158, R. C. M. 1921; amd. Sec. 3, Ch. 94, L. 1969.

Amendments

The 1969 amendment rewrote this section to extend time for presenting warrants from six months to one year. For previous text, see parent volume.

79-109. (159) Issuance of duplicate warrant. A. The state auditor is hereby empowered and authorized to issue a duplicate warrant whenever any warrant drawn by him upon the treasurer of the state of Montana shall have been lost or destroyed. This duplicate warrant must be in the same form as the original, except that it must have plainly printed across its face the word "duplicate," and, except as herein provided, no such warrant shall be issued or delivered, except the person entitled to receive the same shall deposit with the state auditor a bond in double the amount for which the duplicate warrant is issued, conditioned to save the state of Montana, and its officers, harmless on account of the issuance of said duplicate warrant.

B. No bond of indemnity shall be required:

(1) When the payee is the United States government, a state of the United States, any agency, instrumentality or officer of the United States government or of a state, or any county, city, city and county, town, district, or other political subdivision of a state or any officer thereof;

(2) When the owner or custodian is the state of Montana or any agency or officer thereof;

(3) When the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the United States government or by the state of Montana; or

(4) When the amount of the lost or destroyed warrant is less than fifty dollars (\$50);

Provided, however, that where the owner or custodian applies under the provisions of subsection (3) or (4) hereof, the application shall include an agreement to indemnify and hold harmless the state, its officers and employees, from any loss resulting from the issuance of a duplicate warrant. Any loss incurred in connection with the issuance of a duplicate warrant shall be charged against the account from which the payment was derived.

History: En. Sec. 1, Ch. 19, L. 1909; re-en. Sec. 159, R. C. M. 1921; amd. Sec. 4, Ch. 94, L. 1969.

Amendments

The 1969 amendment designated the former section as subsection A, inserted "except as herein provided" before "no such warrant" and deleted "by the state auditor" after "issued or delivered" in the second sentence; and added subsection B.

Repealing Clause

Section 5 of Ch. 94, Laws 1969 read "Section 79-107, R. C. M. 1947, is repealed."

Effective Date

Section 6 of Ch. 94, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 24, 1969.

CHAPTER 2—GENERAL FISCAL DUTIES OF STATE TREASURER

Section

- 79-201. State treasurer—general fiscal duties.
 79-202. State moneys, how expended by treasurer.
 79-211. Deposit of gas and oil royalties from federal government in highway account.

79-201. (174) State treasurer—general fiscal duties. The state treasurer shall be the custodian of all moneys and securities of the state unless otherwise expressly provided by law, and it is the duty of the state treasurer:

1. To receive and account for all moneys belonging to the state, not expressly required by law to be received and kept by some other person.
2. To issue receipts which must be consecutively numbered beginning with number one at the commencement of each fiscal year for all sums of money which shall be paid into the treasury, and to deliver a copy of every such receipt to the person making such payment, the state auditor and the state controller.
3. To pay warrants out of the funds upon which they are drawn.
4. Upon payment of any warrant, to take upon the back thereof the receipt of the person to whom it is paid.
5. To keep an account of all moneys received and disbursed.
6. At the request of either house of the legislative assembly, or of any committee thereof, to give information in writing as to the condition of the treasury, or upon any subject relating to the duties of his office.
7. To discharge such other duties as may be imposed upon him by law.
8. Securities may be placed in safekeeping with banks subject to national supervision or Montana state examination and a safekeeping receipt may be accepted in lieu of the actual securities. Custody and control of repurchase agreements and mortgages shall be accomplished by the receipt of a confirmation of purchase.

History: En. Sec. 440, Pol. C. 1895; re-en. Sec. 179, Rev. C. 1907; re-en. Sec. 174, R. C. M. 1921; amd. Sec. 8, Ch. 147, L. 1963; amd. Sec. 1, Ch. 152, L. 1971; amd. Sec. 1, Ch. 269, L. 1973. Cal. Pol. C. Sec. 452.

Amendments

The 1971 amendment inserted "The state treasurer shall be the custodian of all moneys and securities of the state unless otherwise expressly provided by law, and"

at the beginning of the section; substituted "account for" for "keep" in subdivision (1); substituted "not expressly required by law" for "and not required" in subdivision (1); deleted a former subdivision (2), for text of which see parent volume; substituted a new subdivision (2) for former subdivision (3), for text of which see parent volume; redesignated former subdivisions (4), (5) and (6) as (3), (4) and (5); deleted "and in the order" before "in which they are drawn" at the

end of subdivision (3); deleted "and file and preserve the same" from the end of subdivision (4); deleted former subdivisions (7), (8), (10) and (11) for text of which see parent volume; and redesignated former subdivisions (9) and (12) as subdivisions (6) and (7), respectively.

The 1973 amendment added subdivision 8.

Effective Date

Section 2 of Ch. 269, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 10, 1973.

79-202. (193) State moneys, how expended by treasurer. Except as herein provided no moneys received by the state treasurer shall be paid out by him except upon state warrant issued by the state auditor, and the state auditor shall not issue his warrant upon the state treasurer except upon a claim duly approved by the department of administration in accordance with the laws governing the expenditure of state moneys; however, interest and principal on the public debt may be paid by treasurer's check from the moneys pledged for such payment, and the provisions of this section shall not apply to warrants issued upon contingent revolving accounts that are in the custody of the state treasurer.

History: En. Sec. 2, Ch. 112, L. 1921; re-en. Sec. 193, R. C. M. 1921; amd. Sec. 6, Ch. 97, L. 1961; amd. Sec. 2, Ch. 152, L. 1971; amd. Sec. 98, Ch. 326, L. 1974.

Amendments

The 1971 amendment inserted "Except as herein provided" at the beginning of the section; and substituted "except upon a claim duly approved by the state controller in accordance with the laws governing the expenditure of state moneys; however, interest and principal on the public debt may be paid by treasurer's check from the moneys pledged for such payment, and the provisions of this section shall not apply to warrants issued upon contingent revolving accounts that are in the custody of the state treasurer" at the end of the section for "save by virtue of unexhausted appropriations therefor made by the legislative assembly, and after the presentation to him of a claim duly ap-

proved by the state controller, save and except for salaries and compensation of officers fixed by law; provided, however, that nothing in this act contained shall require an appropriation by the legislature for the administering of any specific trust funds administered by any state board, commission or department."

The 1974 amendment substituted "department of administration" in this section for "state controller."

Repealing Clause

Section 3 of Ch. 152, Laws 1971 read "Sections 79-801, 79-804, 79-806, 79-807, 79-808, and 79-810, R. C. M., 1947, are repealed."

Effective Date

Section 4 of Ch. 152, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

79-208. (180) Registry and interest on state warrants.

Compiler's Notes

Section 79-801, referred to in this sec-

tion, was repealed by Sec. 3, Ch. 152, Laws 1971.

79-211. Deposit of gas and oil royalties from federal government in highway account. It shall be the duty of the state treasurer to pay one-half ($\frac{1}{2}$) of the moneys received from the treasurer of the United States as the state's share of gas and oil royalties under the act of Congress of February 25, 1920, to the state highway account in the earmarked revenue fund.

History: En. Sec. 1, Ch. 246, L. 1973.

Title of Act

An act requiring the state treasurer to

credit the state highway account in the earmarked revenue fund with moneys received under the act of Congress of February 25, 1920.

CHAPTER 3—DEPOSIT AND INVESTMENT OF STATE FUNDS

Section

- 79-301. Deposit of funds in the hands of the state treasurer.
- 79-302. Interest requirements on Montana public funds—federal conformity.
- 79-305. Investment of funds not immediately needed.
- 79-306. State treasurer as treasurer of state agencies—deposits of moneys.
- 79-307. Security for deposits of public funds.
- 79-308. Unified investment program for public funds.
- 79-309. Investment funds.
- 79-310. Permissible investments.
- 79-311. Investment of local government funds.

79-301. (182) Deposit of funds in the hands of the state treasurer. (1)

Under the direction of the board of investments, the state treasurer shall deposit public moneys in his possession and under his control in solvent banks, building and loan associations, and savings and loan associations located in the state, except as otherwise provided by law, subject to national supervision or state examination. The board of investments may require the payment of quarter annual interest on daily balances of collected funds at a rate to be agreed upon between the depository banks, building and loan associations, and savings and loan associations and the board of investments, which rate shall be fixed semiannually during the months of July and January of each year.

(2) No such deposits in excess of the amount insured by the federal deposit insurance corporation or federal savings and loan insurance corporation shall be made unless the bank, building and loan association and savings and loan association first delivers to the state treasurer or deposits in trust with some solvent bank as hereinafter provided as security therefor, bonds or other obligations of the kinds listed in section 4 [79-307] of this act, having a market value at least equal to the amount of such deposits in excess of the amount so insured. The board of investments may require security of a greater value. When negotiable securities are placed in trust, the trustees' receipt may be accepted instead of the actual securities if the receipt is in favor of the state treasurer, his successors in office, and the state of Montana, and the form of receipt and the trustee have been approved by the board of investments.

(3) When moneys have been deposited, under the board of investments and in accordance with the law, the treasurer is not liable for loss on account of any such deposit occurring from any cause other than his own neglect or fraud. The state treasurer shall deposit funds in such banks, building and loan associations and savings and loan associations, and in such amounts as may be designated by the board of investments, and withdraw such deposits when instructed to by the board of investments. The state treasurer shall withdraw all deposits, or any part thereof, from time to time, to pay and discharge the legal obligations of the state, duly presented to him in accordance with the law.

(4) Any bank, building and loan association and savings and loan association pledging securities as provided in this section may at any time substitute securities for any part of the securities pledged. The collateral so substituted shall conform to section 4 [79-307] of this act and have a market value at least sufficient for compliance with subsection (2) above. If the securities so substituted are held in trust, the trustee shall, on the same

day the substitution is made, forward by registered or certified mail to the state treasurer and to the depository bank, a receipt specifically describing and identifying both the securities substituted and those released and returned to the depository bank.

History: En. Sec. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909; re-en. Sec. 182, R. C. M. 1921; amd. Sec. 1, Ch. 85, L. 1923; amd. Sec. 1, Ch. 80, L. 1929; amd. Sec. 1, Ch. 62, L. 1935; amd. Sec. 1, Ch. 35, L. 1963; amd. Sec. 1, Ch. 259, L. 1969; amd. Sec. 1, Ch. 298, L. 1973; amd. Sec. 1, Ch. 14, L. 1974.

Amendments

The 1969 amendment extended subsection (2) to include as authorized securities several different kinds of federal agency securities, state and county general obligation bonds from other states, and certain types of corporate bonds.

The 1973 amendment inserted "Under the direction of the board of investments" at the beginning of subsection (1); deleted "as designated by the state depository board, and no other" from the end of the first sentence of subsection (1); implemented the transfer of functions from the state depository board and the state examiner to the board of investments; deleted from the second sentence of subsection (1) a clause relating to the first rate-fixing date; substituted "insured by the federal deposit insurance corporation" near the beginning of subsection (2) for "guaranteed or insured according to law"; substituted "bonds or other obligations of the kinds listed in section 79-307, having a market value at least equal to the amount of such deposits in excess of the amount so

insured" in subsection (2) for an itemized list of acceptable securities; deleted subsection (3), for text of which see parent volume; redesignated subsections (4) and (5) as (3) and (4); deleted "through damage by the elements, or" before "from any cause" in the first sentence of subsection (3); deleted "or dishonorable conduct" at the end of the first sentence of subsection (3); substituted "shall withdraw" in the third sentence of subsection (3) for "shall have the authority . . . to withdraw"; deleted from subsection (3) a final sentence preserving the right of the board of land commissioners to invest in otherwise lawful securities; substituted the second sentence of subsection (4) for sentences requiring that substituted collateral "be approved by the state depository board at its next official meeting" and "be at least equal in principal amount to the securities for which substitution is made"; and made numerous minor changes in phraseology and style.

The 1974 amendment inserted "building and loan associations, and savings and loan associations" after "banks" throughout the section; inserted "or federal savings and loan insurance corporation" in the first sentence of subsection (2); deleted "the direction of" before "the board of investments" near the beginning of subsection (3); and made a minor change in punctuation.

79-302. Interest requirements on Montana public funds—federal conformity. The interest requirements on deposits of public funds under the laws of the state of Montana or otherwise by county, city and town treasurers shall not at any time be in violation of any act of the Congress of the United States or of any rule or regulation of the federal reserve system, Federal Home Loan Bank System, or the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation or any other fiscal agency of the United States or created by it, of which the banks, building and loan associations or savings and loan associations of this state generally may be members or debtors.

History: En. Sec. 1, Ch. 104, L. 1937; amd. Sec. 2, Ch. 14, L. 1974.

Amendments

The 1974 amendment inserted "Federal Home Loan Bank System" and "Federal

Savings and Loan Insurance Corporation" near the middle of the section; and inserted "building and loan associations or savings and loan associations" near the end of the section.

79-303, 79-304. (182.1) Repealed.

Repeal

Sections 79-303 and 79-304 (Sec. 1, Ch.

64, L. 1935; Sec. 1, Ch. 81, L. 1937; Sec. 1, Ch. 68, L. 1941; Sec. 1, Ch. 101, L.

1945; Secs. 4, 5, Ch. 176, L. 1953; Sec. 10, Ch. 147, L. 1963), relating to investment of state funds, were repealed by Sec. 2, Ch. 205, Laws 1971.

79-305. (270) Investment of funds not immediately needed. The board of investments shall invest as part of the long term investment fund or the short term investment fund, depending upon when the principal of such funds may be required, all funds under the direction and control of the state board of examiners, not immediately needed by that board.

History: En. Sec. 1, Ch. 1, L. 1921; re-en. Sec. 270, R. C. M. 1921; amd. Sec. 1, Ch. 122, L. 1925; amd. Sec. 6, Ch. 176, L. 1953; amd. Sec. 26, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "board of investments" at the beginning of this section for "state board of examiners"; and made minor changes in phraseology.

79-306. (192) State treasurer as treasurer of state agencies—deposits of moneys. (1) The state treasurer is designated the treasurer of every state agency and institution.

(2) All state agencies and institutions shall deposit daily all moneys, credits, evidences of indebtedness, and securities either in banks, building and loan associations or savings and loan associations located in the city or town in which the agencies and institutions are situated if there is a qualified bank, building and loan association or savings and loan association in the city or town as designated by the state treasurer with the approval of the board of investments, or with the state treasurer. Such banks, building and loan association or savings and loan association shall pledge securities sufficient to cover the deposits at all times, and the deposits shall be made in the name of the state treasurer, and shall be subject to withdrawal at his option, and shall draw interest as other state moneys, in accordance with the provisions of sections 79-301 and 79-302.

(3) Nothing in this chapter shall impair or otherwise affect any covenant entered into pursuant to law by any agency or institution respecting the segregation, deposit, and investments of any revenues or funds pledged for the payment and security of bonds or other obligations authorized to be issued by such agency, and all such funds shall be deposited and invested in accordance with such covenants notwithstanding any provision of this chapter.

History: En. Sec. 1, Ch. 112, L. 1921; re-en. Sec. 192, R. C. M. 1921; amd. Sec. 1, Ch. 157, L. 1931; amd. Sec. 9, Ch. 147, L. 1963; amd. Sec. 2, Ch. 298, L. 1973; amd. Sec. 3, Ch. 14, L. 1974.

Amendments

The 1973 amendment deleted from subsection (1) a second sentence requiring departments located in the capitol to make daily deposits with the treasurer; deleted "not located in the capitol" following "agencies and institutions" near the beginning of subsection (2); substituted "board of investments" for "state depositary board" near the end of the first sen-

tence in subsection (2); deleted "furnish indemnifying bonds" following "Such bank shall" near the beginning of the second sentence in subsection (2); inserted "in accordance with the provisions of sections 79-301 and 79-302" at the end of the second sentence in subsection (2); deleted the third sentence of subsection (2); added subsection (3); and made minor changes in style and phraseology.

The 1974 amendment inserted references to building and loan associations and savings and loan associations throughout the section after references to banks; and made a minor change in phraseology.

79-307. Security for deposits of public funds. The following kinds of securities may be pledged to secure deposits of public funds:

- (1) direct obligations of the United States;
- (2) securities as to which the payment of principal and interest is guaranteed by the United States;
- (3) securities issued or fully guaranteed by the following agencies of the United States, whether or not guaranteed by the United States:
 - (a) commodity credit corporation;
 - (b) federal intermediate credit banks;
 - (c) federal land bank;
 - (d) bank for co-operatives;
 - (e) federal home loan banks;
 - (f) federal national mortgage association;
 - (g) government national mortgage association;
 - (h) small business administration; and
 - (i) federal housing administration (not including insured mortgages);
- (4) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;
- (5) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state, issued in evidence of claims in an amount which, with all other claims on the same fund, do not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;
- (6) obligations of housing authorities of the state, secured by a pledge of annual contributions or by a loan agreement, made by the United States or any agency thereof, providing for contributions or a loan sufficient, with other funds pledged, to pay the principal of and interest on the obligations when due; and
- (7) general obligation bonds of other states and of municipalities and counties of other states.

History: En. Sec. 4, Ch. 298, L. 1973.

Title of Act

An act to amend sections 79-301, 79-306, and 79-601, R. C. M. 1947, for the codification and general revision of the laws relating to the deposit of state funds and the unified investment program for public

funds as required by article VIII, section 13 of the 1972 Montana constitution; and to repeal sections 79-1201 through 79-1211, 79-1213, 79-1214, and 79-1216, and sections 81-1001 through 81-1008, R. C. M. 1947; and amending section 79-1215, R. C. M. 1947.

79-308. Unified investment program for public funds. (1) The uniform investment program directed by article VIII, section 13, of the 1972 Montana constitution to be provided for public funds shall be administered by the board of investments in accordance with the rules provided in this chapter, and with that degree of judgment and care, under circumstances from time to time prevailing, which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived.

(2) All state funds shall be invested and reinvested in securities enumerated in section 7 [79-310] of this act, to the maximum extent consistent with this policy and with the need and timing of cash expenditures for particular purposes.

(3) The board of investments may :

(a) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to sections 79-301 and 79-306;

(b) direct the sale of any securities in the program at their full and true value, when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(4) The state treasurer shall keep an account of the total of each investment fund and of all the investments belonging to such fund, and of the participation of each treasury fund account therein, and shall make from time to time such reports with reference thereto as may be directed by the board of investments.

(5) The cost of administering and accounting for each investment fund shall be deducted from the income therefrom, except that such costs of the trust and legacy fund shall be paid from income otherwise receivable from the pooled investment fund; and the amounts required for this purpose shall be appropriated by the legislature from the respective investment funds.

History: En. Sec. 5, Ch. 298, L. 1973.

79-309. Investment funds. For each treasury fund account into which state funds are segregated by the department of administration pursuant to section 79-413, individual transactions and totals of all investments shall be separately recorded to the extent directed by the department. However, the securities purchased and cash on hand for all treasury fund accounts not otherwise specifically designated by law or by the provisions of a gift, donation, grant, legacy, bequest or devise from which the fund account originates to be invested shall be pooled in an account to be designated "Treasury Cash Account" and placed in one of the investment funds designated below. The share of the income for this account shall be credited to the general fund. If within the list hereinafter of separate investment funds, more than one investment fund is included which may be held jointly with others under the same separate listing, all investments purchased for that separate investment fund shall be held jointly for all the accounts participating therein, which shall share all capital gains and losses and income pro rata. Separate investment funds shall be maintained as follows:

(1) the trust and legacy fund, including all public school funds and funds of the Montana university system and other state institutions of learning referred to in sections 2 and 10, article X, of the 1972 Montana constitution, and all money referred to in section 79-410(8);

(2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to each retirement or insurance system now or hereafter maintained by the state, including those now maintained under the following statutes:

(a) the highway patrolmen's retirement system described in Title 31, chapter 2;

(b) the public employees' retirement system described in Title 68;

(c) the game wardens' retirement system described in Title 68, chapter 14;

(d) the teachers' retirement system described in Title 75, chapter 62; and

(e) the industrial accident insurance program described in Title 92, chapter 11;

(3) a pooled investment fund, including all other accounts within the treasury fund structure established by section 79-410;

(4) a fund consisting of gifts, donations, grants, legacies, bequests, devises and other contributions made or given for a specific purpose or under conditions expressed in the gift, donation, grant, legacy, bequest, devise or contribution on the part of the state of Montana to be observed. If such gift, donation, grant, legacy, bequest, devise, or contribution permits investment, and is not otherwise restricted by its terms, it may be treated jointly with other such gifts, donations, grants, legacies, bequests, devises, or contributions; and

(5) such additional investment funds as may be expressly required by law, or may be determined by the board of investments to be necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular source.

History: En. Sec. 6, Ch. 298, L. 1973.

79-310. Permissible investments. (1) The following securities are permissible investments for all investment funds referred to in 79-309, except as indicated:

(a) any securities authorized to be pledged to secure deposits of public funds under 79-307 of this act;

(b) bonds, notes, debentures, equipment obligations, or any other kind of absolute obligation of any corporation organized and operating in any state of the United States, or in Canada if the obligations purchased are payable in United States dollars; provided that all investments under subsection (b) must be rated by one (1) nationally recognized rating agency among the top third of their quality categories, not applicable to defaulted bonds;

(c) commercial paper of prime quality, as defined by one (1) nationally recognized rating agency, issued by any corporation organized and operating in any state of the United States, provided that:

(i) such securities mature in two hundred seventy (270) days or less; and

(ii) the issuing corporation, or the parent company of a finance subsidiary issuing commercial paper, at the time of the last financial reporting period, had a ratio of current assets to current liabilities, including among current liabilities long-term debt maturing within one (1) year, of at least one and one-half ($1\frac{1}{2}$) to one (1); and had received net income averaging one million dollars (\$1,000,000) or more annually for the preceding five (5) years; and

(iii) no investment may be made at any time under subsection (c) which would cause the book value of such investments in any investment fund to exceed ten per cent (10%) of the book value of such fund, or would cause the commercial paper of any one corporation to exceed two per cent (2%) of the book value of such fund;

(d) bankers' acceptances guaranteed by any bank having its principal office in any state of the United States and having deposits in excess of five hundred million dollars (\$500,000,000);

(e) interest-bearing deposits in banks, building and loan associations, and savings and loan associations located in the state of Montana, provided, however, that the board of investments shall require pledged securities as specified in section 79-301; interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds;

(f) unencumbered real property and first mortgages on unencumbered real property, provided that:

(i) no such mortgage shall be purchased unless:

(A) the principal amount of the loan secured by the mortgage is seventy-five per cent (75%) or less of the appraised value of the property; or

(B) thirty per cent (30%) or more of the loan secured is guaranteed or insured in the event of default by the United States of America or an agency thereof; or

(C) the mortgagor has leased the mortgaged property to a person, firm, or corporation whose rental payments under the lease are guaranteed for the full term of the loan by an agency of the United States; and

(ii) no investment shall be made at any time under subsection (f) which would cause the book value of such investments in any investment fund to exceed fifty per cent (50%) of the book value of such fund.

(2) Investments from the pooled investment fund, shall be restricted to fixed income securities described in subsections (a) to (e) above.

(3) Retirement funds, only, may be invested in preferred and common stocks of any corporation organized and operating in any state of the United States, provided that:

(a) the corporation has assets of a value not less than ten million dollars (\$10,000,000); and

(b) if the investment is preferred stock, the corporation's aggregate earnings available for payment of interest and preferred dividends, for a period of five (5) consecutive years immediately before the date of investment, have been at least one and one-half ($1\frac{1}{2}$) times the aggregate of interest and preferred dividends required to be paid during this period; and

(c) if the investment is common stock,

(i) the stock has paid cash dividends in each of at least five (5) years immediately before it is purchased; and

(ii) the aggregate earnings of the corporation during this period which were available for payment of dividends on common stock were at least equal to the aggregate of the cash dividends paid thereon; and

(iii) not more than two per cent (2%) of the assets of any retirement fund may be invested in common stocks or in fixed income securities convertible into common stock not conforming to the dividend and earnings standards stated in paragraphs (i) and (ii) above, so long as the corporation maintains the asset value required in subsection (a) and evidences appropriate growth potential and probable earnings gain; and

(d) no investment may be made at any time under subsection (3) which would cause the book value of such investments in any retirement fund to exceed twenty per cent (20%) of the book value of such fund, or would cause the stock of one corporation to exceed one per cent (1%) of the book value of such retirement fund.

(4) The state board of investments shall endeavor to direct the state's investment business to those investment firms, and/or banks, which maintain offices in the state and thereby make contributions to the state economy. Further, due consideration shall be given to investments which will benefit the smaller communities in the state of Montana. The state's investment business will be directed to out-of-state firms only when there is a distinct economic advantage to the state of Montana.

History: En. Sec. 7, Ch. 298, L. 1973; amd. Sec. 1, Ch. 92, L. 1974; amd. Sec. 1, Ch. 228, L. 1974.

a composite section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 92 and once by Ch. 228. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made

Amendments

Chapter 92, Laws of 1974, substituted "79-309" for "section 6" near the beginning of subsection (1); substituted "79-307" for "section 4" in subsection (1)(a); and inserted "building and loan associations, and savings and loan associations" near the beginning of subsection (1)(e).

Chapter 228, Laws of 1974, added subsection (4).

79-311. Investment of local government funds. (1) The governing body of any city, county, school district, or other local government unit or political subdivision having funds which are available for investment, and are not required by law or by any covenant or agreement with bondholders or others to be segregated and invested in a different manner, may direct its treasurer to remit such funds to the state treasurer for investment under the direction of the board of investments as part of the pooled investment fund.

(2) A separate account, designated by name and number for each such participant in the fund, shall be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report shall be furnished to each participant having a beneficial interest in the pooled investment fund, showing the changes in investments made during the preceding month. Details of any investment transaction shall be furnished to any participant upon request.

(3) The principal and accrued income, and any part thereof, of each and every account maintained for a participant in the pooled investment fund shall be subject to payment at any time from the fund upon request. Accumulated income shall be remitted to each participant at least annually.

(4) No order or warrant shall be issued upon any account for a larger amount than the principal and accrued income of the account to which it applies, and if any such order or warrant is issued, the participant receiving it shall reimburse the excess amount to the fund from any funds not otherwise appropriated, and the state treasurer shall be liable under his official bond for any amount not so reimbursed.

History: En. Sec. 8, Ch. 298, L. 1973.

"Sections 79-1201 through 79-1211, 79-1213, 79-1214, and 79-1216 and sections 81-1001 through 81-1008, R. C. M. 1947, are repealed."

Repealing Clause

Section 9 of Ch. 298, Laws 1973 read

CHAPTER 4—TREASURY FUND STRUCTURE

Section

79-410. Fund structure.

79-413. Creation and abolition of new accounts.

79-414. Maintenance of fund and account records—appropriations and transfers—accounting procedures.

79-415. Appropriation and disbursement of moneys from the treasury.

79-410. Fund structure. There are in the state treasury only the following funds:

(1) to (6). * * * [Same as parent volume.]

(7) Revolving fund. The revolving fund consists of moneys used to

(a) Defray reimbursable expenditures, and

(b) Supply working capital for enterprise-type operations.

(8) and (9). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 147, L. 1963;
amd. Sec. 1, Ch. 321, L. 1973.

division (7)(b); and redesignated former clauses (7)(a)(i) and (7)(a)(ii) as (7)(a) and (7)(b).

Amendments

The 1973 amendment deleted former sub-

79-413. Creation and abolition of new accounts. Moneys deposited in each fund except the general fund shall be segregated by the department of administration by specific accounts based on source, function, or department. When moneys deposited in the state treasury cannot logically be credited to an existing account, or when it is impractical or undesirable for an agency of state government to segregate moneys in its own accounts, the department of administration, in its discretion, may create new accounts consistent with the definitions in section 79-410. However, the department of administration shall create as few new accounts as practicable. The department of administration shall periodically examine all accounts, and shall abolish or consolidate inactive or unnecessary accounts.

History: En. Sec. 5, Ch. 147, L. 1963;
amd. Sec. 27, Ch. 326, L. 1974.

ences to "department of administration" throughout this section for references to "state controller"; and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted refer-

79-414. Maintenance of fund and account records—appropriations and transfers—accounting procedures. (1) * * * [Same as parent volume.]

(2) The department of administration shall record receipts and disbursements for treasury funds and for accounts within treasury funds, and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each account. The department of administration shall adopt the necessary procedures to ensure that interdepartmental or intradepartmental transfers of money do not result in inflation of figures reflecting total governmental costs and revenues.

(3) When the expenditure of an appropriation is necessary, and the cash balance in the account from which the appropriation was made is insufficient, the department of administration may authorize a transfer, as a temporary loan bearing no interest, of unrestricted moneys from other accounts, provided that there is reasonable evidence that the income provided for the remainder of the fiscal year will be sufficient to restore the amount so transferred, and provided the loan is recorded in the state accounting records. No account shall be so impaired that all proper demands thereon cannot be met.

(4) When moneys have been appropriated from several sources for the operation of a state agency, the department of administration may establish an account to receive, hold and disburse moneys appropriated for the operation of the agency and regulate the transfer of moneys to the account in accordance with the laws governing the expenditure of state moneys.

History: En. Sec. 6, Ch. 147, L. 1963; amd. Sec. 1, Ch. 268, L. 1971; amd. Sec. 98, Ch. 326, L. 1974.

The 1974 amendment substituted "department of administration" in subsections (2) through (4) for "state controller" and "controller."

Amendments

The 1971 amendment added subsections (3) and (4).

79-415. Appropriation and disbursement of moneys from the treasury.

(1) Moneys deposited in the general fund, the earmarked revenue fund, and the federal and private revenue fund, with the exception of trust income and refunds authorized in subsection (3) of this act, shall be paid out of the treasury only on appropriation made by law. Moneys deposited in the revolving fund for the purpose of financing administrative operations shall be paid out of the treasury only by appropriation made by law. Moneys deposited in the revolving fund for the purpose of purchasing consumable or depreciable assets may be expended within the limitations of an annual financial plan approved by the department of administration.

(2) * * * [Same as parent volume.]

(3) Money paid into the state treasury through error or under circumstances such that the state is not legally entitled to retain it, and a refund procedure is not otherwise provided by law, may be refunded upon the submission of a verified claim approved by the department of administration.

(4) For the purpose of supplying deficiencies in the general fund, the state treasurer may temporarily borrow from other treasury funds, providing that the loan is recorded in the state accounting records. Such loan shall bear no interest and no fund shall be so impaired that all proper demands thereon cannot be met.

History: En. Sec. 7, Ch. 147, L. 1963; amd. Sec. 2, Ch. 268, L. 1971; amd. Sec. 2, Ch. 321, L. 1973; amd. Sec. 98, Ch. 326, L. 1974.

Amendments

The 1971 amendment inserted "and refunds authorized in subsection (3) of this act" in subsection (1); and added subsections (3) and (4).

The 1973 amendment deleted "the revolving fund" following "earmarked revenue fund" in subsection (1); and added the second sentence to subsection (1).

The 1974 amendment substituted "department of administration" at the end of subsection (3) for "state controller."

CHAPTER 6—PERPETUAL APPROPRIATIONS FOR SUPPORT OF STATE INSTITUTIONS—CONTINGENT REVOLVING ACCOUNTS

Section

- 79-601. Support of state institutions.
 79-602. Contingent revolving accounts—when established.
 79-603. State agencies may retain certain moneys, when.

79-601. (194) Support of state institutions. For the support and endowment of each state institution there is annually and perpetually appropriated the income from all permanent endowments therefor and from all land grants as provided by law. All moneys received or collected in connection with such endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose whatever, except revenues pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system, and for the refunding of such obligations, or moneys which may constitute temporary deposits, all or part of which may be subject to withdrawal or repayment, shall be paid over to the state treasurer who shall deposit the same to the credit of the proper fund.

History: En. Sec. 3, Ch. 112, L. 1921; re-en. Sec. 194, R. C. M. 1921; amd. Sec. 3, Ch. 14, L. 1941; amd. Sec. 11, Ch. 147, L. 1963; amd. Sec. 3, Ch. 298, L. 1973.

Amendments

The 1973 amendment combined the former preliminary paragraph and former paragraph 1 into one paragraph; inserted "in connection with such endowments"

near the beginning of the second sentence; substituted "obligations incurred for the purchase, construction, equipment, or improvement of the facilities at units of the Montana university system, and for the refunding of such obligations" for "bonds issued in connection with the construction of buildings" near the end of the second sentence; and made minor changes in style and phraseology.

79-602. (195) Contingent revolving accounts—when established. The department of administration may authorize the establishment and maintenance at any and all of the state institutions, or in any of the departments, boards, or commissions, of Montana of contingent revolving accounts, transferring in trust to the business offices of said institutions such sums of money as may appear necessary, to be used by said institutions for the payment of demands requiring immediate cash payment, such as payment of minor invoices, invoices for which discount period is too short to take advantage of the discount if payment is made by warrant, freight and express charges, travel advances, postage, publications requiring remittance to accompany the order, and the establishment of cash change funds, all under specific regulations to be established by the department of administration. But each and every state institution granted a contingent revolving account shall report to the department of administration monthly all transactions involving such contingent revolving accounts, with proper vouchers for every payment made therefrom. The department of administration may cancel such authorizations and recall such funds at pleasure.

History: En. Sec. 4, Ch. 112, L. 1921; re-en. Sec. 195, R. C. M. 1921; amd. Sec. 9, Ch. 80, L. 1961; amd. Sec. 1, Ch. 148, L. 1969; amd. Sec. 98, Ch. 326, L. 1974.

Amendments

The 1969 amendment inserted "such as payment of minor invoices * * * cash

change funds, all" after "demands requiring immediate cash payment" in the first sentence.

The 1974 amendment substituted "department of administration" throughout this section for "state controller."

79-603. (196) State agencies may retain certain moneys, when. The department of administration may, in its discretion, permit any state agency to retain in its possession, under conditions the department of administration may prescribe, moneys that would otherwise be deposited in the agency fund as defined in the treasury fund structure act. The department of administration may cancel this permission and require the deposit of the moneys with the state treasurer. However, the state treasurer, with the consent of the state depository board, shall designate depositories for the moneys and securities, and require indemnifying bonds or pledged securities sufficient to adequately and properly secure the amounts deposited in the depositories.

History: En. Sec. 5, Ch. 112, L. 1921; re-en. Sec. 196, R. C. M. 1921; amd. Sec. 2, Ch. 157, L. 1931; amd. Sec. 12, Ch. 147, L. 1963; amd. Sec. 3, Ch. 268, L. 1971; amd. Sec. 28, Ch. 326, L. 1974.

Amendments

The 1971 amendment substituted "agency" for "institution" in the first sentence; substituted "moneys that * * * structure act" at the end of the first sentence for "incomes from dormitories conducted by state institutions, and moneys deposited in

trust by students, members, inmates or other persons, which may be subject to refund to the depositors on demand or otherwise"; substituted "moneys" in the second and third sentences for "funds"; and made a minor change in punctuation.

The 1974 amendment substituted references to "department of administration" in the first and second sentences for references to "state controller"; and made minor changes in punctuation and phraseology.

CHAPTER 8—MISCELLANEOUS POWERS AND DUTIES OF STATE TREASURER—SUSPENSION

79-801. (183) Repealed.

Repeal

Section 79-801 (Sec. 444, Pol. C. 1895), relating to posting of warrants for re-

demption, was repealed by Sec. 3, Ch. 152, Laws 1971.

79-804. (185) Repealed.

Repeal

Section 79-804 (Sec. 1, Ch. 5, L. 1909), relating to a stenographer for the state

treasurer, was repealed by Sec. 3, Ch. 152, Laws 1971.

79-806 to 79-808. (187.1 to 187.3) Repealed.

Repeal

Sections 79-806 to 79-808 (Secs. 1 to 3, Ch. 6, L. 1925), relating to accounting and

the state treasurer's reports, were repealed by Sec. 3, Ch. 152, Laws 1971.

79-810. (189) Repealed.

Repeal

Section 79-810 (Sec. 3, Ch. 141, L. 1907),

relating to reports of depositories, was repealed by Sec. 3, Ch. 152, Laws 1971.

79-813. (197.1) Repealed.**Repeal**

Section 79-813 (Sec. 1, Ch. 58, L. 1931; Sec. 13, Ch. 147, L. 1963), relating to sale

of property from escheated estates, was repealed by Sec. 1, Ch. 117, Laws 1973.

CHAPTER 10—STATE BUDGET ACT**Section**

79-1001. Chapter to be cited, how.

79-1006, 79-1007. [Transferred.]

79-1011. [Transferred.]

79-1012. Governor chief budget officer—appointment of budget director.

79-1013. Blanks for preparation of budget estimates—distribution—form—submission of information.

79-1014. Preliminary budget—preparation—submission to governor and governor-elect.

79-1015. Submission of budget to legislature—form—contents.

79-1015.1. Legislative action.

79-1015.2. Right of officers to appear on consideration of budget.

79-1015.3. Disposal of unexpended appropriations.

79-1016. Inquiries and investigations by budget director.

79-1017. Other duties of director.

79-1018. Power of director to demand and receive information from state departments, officers, etc.

79-1001. (294) Chapter to be cited, how. This chapter shall be known and may be cited as the "Budget Act."

History: En. Sec. 1, Ch. 205, L. 1919; re-en. Sec. 294, R. C. M. 1921; amd. Sec. 29, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "chapter" for "act" twice.

79-1006, 79-1007. [Transferred.]**Compiler's Notes**

Sections 30 and 31, Ch. 326, Laws of 1974 renumbered these sections as secs. 79-1015.1 and 79-1015.2.

79-1011. [Transferred.]**Compiler's Notes**

Section 32, Ch. 326, Laws of 1974 renumbered this section as sec. 79-1015.3.

79-1012. Governor chief budget officer—appointment of budget director. The governor shall be the chief budget officer of the state and shall appoint a budget director, who shall hold office at the pleasure of the governor, and whose duty it shall be to carry out provisions of this chapter.

History: En. Sec. 1, Ch. 158, L. 1959; amd. Sec. 1, Ch. 101, L. 1969; amd. Sec. 1, Ch. 42, L. 1974; amd. Sec. 1, Ch. 282, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 42 and once by Ch. 282. Neither amendatory act mentioned the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both.

Amendments

The 1969 amendment substituted the second sentence for the following provision: "and shall appoint a director of the budget, who shall hold office at the pleasure of the governor, and whose duty it shall be to carry out the provisions of this chapter."

Chapter 42, Laws of 1974, substituted "and shall appoint a budget director, who shall hold office at the pleasure of the governor, and whose duty it shall be" for "the state controller shall be ex

officio budget director and it shall be his duty"; and made a minor change in punctuation.

Chapter 282, Laws of 1974, made substantially the same changes.

79-1013. Blanks for preparation of budget estimates—distribution—form—submission of information. In the preparation of a state budget the budget director shall not later than the first day of July in the year preceding the convening of the legislative assembly, distribute to all state offices and departments, including the judicial branch, and the legislative branch, the proper blanks necessary for the preparation of budget estimates. These blanks shall be in such form as shall be prescribed by the budget director to procure such information as the budget director shall, in his discretion, feel is necessary for the preparation of a budget including budget estimates, to include estimates of receipts, actual receipts, estimates of disbursements, and actual disbursements, and other information classified and grouped as requested by the budget director and covering such period or periods of time as specified by the budget director.

(a) Except as provided in this paragraph, it shall be the duty of each department, agency and office to submit information requested by the budget director on or before the fifteenth day of August in the even year preceding the convening of the legislative assembly. The Montana university system, the department of institutions, and the department of highways shall submit such information on or before the first day of September of such year.

(b) If any department, institution or agency shall fail to present such requested information within the time herein specified, the budget director shall note that fact in the budget submitted to the governor, and the budget director shall prepare a budget request on behalf of such department, institution or agency, based upon his studies of the operations, plans and needs thereof. Legislative branch requests shall be included in the budget submitted by the governor without changes.

History: En. Sec. 2, Ch. 158, L. 1959; amd. Sec. 1, Ch. 91, L. 1961; amd. Sec. 1, Ch. 223, L. 1969; amd. Sec. 2, Ch. 282, L. 1974.

Amendments

The 1969 amendment inserted "and the Montana state highway commission" after "each state custodial institution" in subdivision (a).

The 1974 amendment substituted "budget director" for "director of the budget" throughout the section; substituted "distribute to all state offices and departments, including the judicial branch, and the legislative branch" in the first sentence for "distribute to all state offices and institutions, including the judicial department"; substituted "estimates of

receipts, actual receipts, estimates of disbursements, and actual disbursements" in the second sentence for "estimates of revenues, actual revenues received, expenditures made"; inserted "and office" after "agency" in the first sentence of subdivision (a); substituted "fifteenth day of August in the even year preceding" in the first sentence of subdivision (a) for "first day of August in the year preceding"; substituted the last sentence of subdivision (a) for "Each unit of the university of Montana, each state custodial institution and the Montana state highway commission shall submit * * * of September of such year"; added the last sentence of subdivision (b); and made minor changes in punctuation.

79-1014. Preliminary budget—preparation—submission to governor and governor-elect. Upon receipt of the completed forms and other available data and information, the budget director shall examine the same for the purpose of determining the necessity of the disbursements and funds re-

quested and shall, on or before the fifteenth day of December in the year preceding the convening of the legislature, submit to the governor and to the governor-elect, if one there be, in writing, a preliminary budget for the ensuing biennium containing the detailed information hereinafter required to be set forth in the budget to be submitted by the governor to the legislative assembly. If so requested by the governor-elect, the governor shall incorporate in the budget, as a separate section, such estimates, comments and recommendations as the governor-elect may wish to make, and this section of the budget shall be transmitted to the legislative assembly without change, and it is the duty of the governor-elect in recommending changes to show a balance between proposed disbursements and anticipated receipts.

History: En. Sec. 3, Ch. 158, L. 1959; amd. Sec. 3, Ch. 282, L. 1974.

appropriations" after "funds requested" in the first sentence; substituted "on or before the fifteenth day of December" for "on or before the first day of December" in the first sentence; deleted "part 2" before "of the budget submitted by the governor" in the first sentence; and added the second sentence.

Amendments

The 1974 amendment substituted "budget director" for "director of the budget" and "disbursements" for "expenditures" in the first sentence; deleted "by ap-

79-1015. Submission of budget to legislature—form—contents. The governor shall, following the receipt of the preliminary budget from the budget director have prepared a budget for the ensuing biennium and shall submit said budget to each member of the legislative assembly at the time of the convening of the legislative assembly. The budget submitted shall set forth a balanced financial plan for the state government for each fiscal year of the ensuing biennium, which plan shall consist of the following:

(1) A financial plan of the state government of the ensuing biennium shall embrace a consolidated budget summary setting forth the aggregate figures of the budget in such manner as to show a balance between the total proposed disbursements and the total anticipated receipts together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary shall be supported by explanatory schedules or statements, classifying receipts and disbursements contained therein by fund, and where applicable, organizational unit.

(2) An analysis of the actual and projected receipts, disbursements and solvency of each accounting entity within each fund for the current and subsequent biennium.

(3) A detailed analysis of receipts by accounting entity within fund indicating classification and source of funds.

(4) A departmental analysis summarizing past and proposed spending plans by agency and the means of financing the proposed plan. Information presented shall include the following:

(a) a statement of departmental goals and objectives and a statement of goals and objectives for each program of the department;

(b) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by program;

(c) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by disbursement category; and

(d) a statement containing further recommendations of the governor should he deem it necessary.

(5) Detailed recommendations for the state long-range building program. Each recommendation shall be presented by department, institution, agency or branch by funding source, with a description of each proposed project. An appropriation measure shall be presented by project, source of funding, and department, agency, institution or branch for which the project is primarily intended.

(6) Appropriation measures detailed by program, fund, and accounting entity, authorizing disbursements and related restrictions thereto by department, institution, or agency of the state.

History: En. Sec. 4, Ch. 158, L. 1959; amd. Sec. 15, Ch. 147, L. 1963; amd. Sec. 4, Ch. 282, L. 1974.

Amendments

The 1974 amendment substituted "budget director" for "director of the budget" in the first sentence; and rewrote subdivisions (1) through (6). For prior law, see parent volume.

79-1015.1. Legislative action. The presiding officers of the house of representatives and of the senate shall promptly refer the budgets and budget bills to the proper committees. The budget bill for the maintenance of the agencies of state government and the state institutions shall be based upon the budget and proposed budget bill so submitted. The legislative assembly may amend the proposed budget bill, but it may not amend the proposed budget bill so as to affect either the obligations of the state or the payment of any salaries required to be paid by the constitution and laws of the state.

History: En. Sec. 6, Ch. 205, L. 1919; re-en. Sec. 299, R. C. M. 1921; amd. Sec. 4, Ch. 167, L. 1933; Sec. 79-1006, R. C. M. 1947; amd. and redes. 79-1015.1 by Sec. 30, Ch. 326, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "agencies" in the second sentence for "departments"; deleted "by increasing or decreasing the items therein" in the last sentence after the first reference to "budget bill"; and made minor changes in punctuation and phraseology.

79-1015.2. Right of officers to appear on consideration of budget. The department of administration and representatives of the executive officers, agencies, and institutions of the state, and other state agencies expending or applying for state moneys, may, and when requested by either the house of representatives or the senate, shall appear and be heard with respect to any budget bill.

History: En. Sec. 7, Ch. 205, L. 1919; re-en. Sec. 300, R. C. M. 1921; Sec. 79-1007, R. C. M. 1947; amd. and redes. 79-1015.2 by Sec. 31, Ch. 326, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "department of administration" at the beginning for "state board of examiners"; substituted "the executive officers, agencies" for "the executive departments, boards, officers, commissions"; and made minor changes in phraseology.

79-1015.3. Disposal of unexpended appropriations. All moneys appropriated for any specific purpose shall, after the expiration of the time for which so appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

History: En. Sec. 2, H. B. 372, p. 16, L. 1895, not published in the codes; re-en. Sec. 304, R. C. M. 1921; amd. Sec. 14, Ch. 147, L. 1963; Sec. 79-1011, R. C. M. 1947; amd. and redes. 79-1015.3 by Sec. 32, Ch. 326, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made minor changes in punctuation and phraseology.

79-1016. Inquiries and investigations by budget director. The budget director or his designated representative shall make such further inquiries and investigations as he shall deem necessary as to any item included in the report and estimates furnished by any department, agency or institution. In making such investigations, he shall be allowed his necessary expenses of travel and subsistence as provided by law in visiting any institution or department in the state. The budget director may appoint a chief assistant and may employ such other personnel as may be necessary to carry out the provisions of this chapter.

History: En. Sec. 5, Ch. 158, L. 1959; amd. Sec. 5, Ch. 282, L. 1974.

Amendments

The 1974 amendment substituted "budg-

et director" for "director of the budget" in two places; and inserted "or his designated representative" before "shall make such further inquiries" in the first sentence.

79-1017. Other duties of director. The budget director in addition to the duties hereinbefore set forth shall perform such other duties as the governor as chief budget officer of the state may direct. He shall, as often as requested by the governor, prepare and furnish reports to the governor concerning appropriations made by the legislative assembly, the receipts and disbursements made by any department, office or institution of the state. The budget director shall be available to all standing committees of the house of representatives and the senate concerned with appropriations, revenue, finance and claims and shall furnish to such committees any information required while said committees are considering the budget.

History: En. Sec. 6, Ch. 158, L. 1959; amd. Sec. 6, Ch. 282, L. 1974.

Amendments

The 1974 amendment substituted "budget director" for "director of the budget"

in two places; and substituted "the receipts and disbursements" in the second sentence after "made by the legislative assembly" for "the receipts from sources other than appropriations, and expenditures."

79-1018. Power of director to demand and receive information from state departments, officers, etc. The budget director shall have power to demand and receive from every department, officer, board, commission, or institution, at any time, any and all information requested.

History: En. Sec. 7, Ch. 158, L. 1959; amd. Sec. 7, Ch. 282, L. 1974.

Amendments

The 1974 amendment substituted "budg-

et director" for "director of the budget"; deleted "including the state controller" after "institution"; and made a minor change in phraseology.

CHAPTER 11—PURCHASE OF STATE GENERAL FUND WARRANTS

Section

- 79-1101. Prior right to purchase general fund warrants reserved to state.
 79-1102. Notice to board of investments of bond sales.
 79-1103. Waiver of notice.
 79-1105. Redemption of bonds before maturity.

79-1101. (1912) Prior right to purchase general fund warrants reserved to state. (1) The state of Montana hereby reserves to itself a preference right, prior to the right of any person, company, or corporation to purchase state general fund warrants issued with funds under the control of the board of investments and subject to investment.

(2) When the board of investments has under its control any funds subject to investment which in its judgment it would be advantageous to have invested in state general fund warrants, and there are not sufficient funds in the state general fund to pay warrants issued against the fund at the time they are issued and presented for payment, it shall authorize and direct the state treasurer to purchase state general fund warrants, designating the fund or funds to be so invested and fixing the amount or amounts. It shall also give notice to the state auditor of the investment to be made by the treasurer, designating the fund or funds to be invested and the amounts. The auditor shall attach to, or stamp, write, or print upon each general fund warrant thereafter issued, until warrants totaling the amounts so designated have been issued, a notice that the state will exercise its preference right to purchase the warrant. The state treasurer shall thereafter when the warrant is presented to him, pay it out of the proper fund as designated by the board and the warrant so purchased shall be registered as other state warrants and bear interest as provided by law.

(3) When the designated amounts have been invested, the state treasurer shall notify the board of investments, which shall thereupon issue orders upon the proper funds addressed to the state auditor for warrants to be issued in favor of the treasurer.

History: En. Sec. 89, Ch. 147, L. 1909; re-en. Sec. 1912, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1927; amd. Sec. 33, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "board

of investments" in subsections (1) and (2) for "state board of land commissioners" and in subsection (3) for "secretary of the state board of land commissioners"; and made minor changes in punctuation and phraseology.

79-1102. (1913) Notice to board of investments of bond sales. All officers in charge of county, city, school district, and irrigation district bond sales shall, at least twenty (20) days before the date of the sales, furnish to the board of investments a copy of the advertisement of the bond sale, and shall thereafter furnish any further information concerning the sale which may be requested by the board.

History: En. Sec. 1, Ch. 78, L. 1921; re-en. Sec. 1913, R. C. M. 1921; amd. Sec. 34, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "board of investments" for "state board of land commissioners"; and made minor changes in punctuation and phraseology.

79-1103. (1914) Waiver of notice. Instead of complying with the provisions of section 79-1102 the officers named in section 79-1102 may, at any time before the date of any bond sale, obtain from the board of investments a written waiver of compliance with the provisions of section 79-1102.

History: En. Sec. 2, Ch. 78, L. 1921; re-en. Sec. 1914, R. O. M. 1921; amd. Sec. 35, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "board of investments" for "state board of land commissioners"; and made minor changes in phraseology.

79-1105. (1916) Redemption of bonds before maturity. (1) The board of investments shall permit any school district, town, city, or county to pay and redeem one or more of its bonds held by the state for the credit of any fund under the investment administration of the board of investments at any time before maturity. In calculating the unpaid interest accrued on any bond or bonds at the time of payment and redemption, interest for a fractional month shall be calculated and collected for a full month.

(2) Payment and redemption of bonds shall be made at the office of the state treasurer unless the bonds by their own terms and provisions are made payable at some other place and payment at his office would be disadvantageous to the redemptioner. When bonds have been so paid and redeemed, the state treasurer shall effectually cancel the bonds and the attached coupons by perforation or otherwise, and mail to the proper treasurer together with his receipt.

(3) This section does not authorize or permit any school district, town, city, or county to issue refunding bonds for the purpose of paying and redeeming any bond or bonds held by the state before the optional or redeemable date therein stated, nor to grant the right to pay any bond or bonds held by the state before the optional or redeemable date from the proceeds of refunding bonds.

History: En. Sec. 2, Ch. 33, L. 1907; Sec. 2202, Rev. C. 1907; amd. Sec. 91, Ch. 147, L. 1909; re-en. Sec. 1916, R. C. M. 1921; amd. Sec. 1, Ch. 70, L. 1925; amd. Sec. 1, Ch. 3, L. 1929; amd. Sec. 36, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "board of investments" in subsection (1) for references to "state board of land commissioners"; deleted from the end of subsection (3) "except as provided in section 75-3907"; and made minor changes in style, punctuation and phraseology.

CHAPTER 12—MONTANA TRUST AND LEGACY FUND— UNIFIED INVESTMENT PLAN

Section

- 79-1212. Payments from Montana trust and legacy fund.
79-1215. Records of treasurer—publicity to contributors given by legislature.

79-1201 to 79-1203. (5668.19 to 5668.21) Repealed.

Repeal

Sections 79-1201 to 79-1203 (Secs. 1 to 3, Ch. 70, L. 1953; Secs. 7 to 9, Ch. 176, L. 1953; Sec. 1, Ch. 118, L. 1957; Sec. 1, Ch. 173, L. 1959; Sec. 1, Ch. 67, L. 1963; Secs. 16, 17, Ch. 147, L. 1963; Sec. 1, Ch. 256, L. 1963; Sec. 1, Ch. 78, L. 1967; Sec.

1, Ch. 185, L. 1967; Sec. 1, Ch. 188, L. 1971; Sec. 1, Ch. 205, L. 1971; Sec. 1, Ch. 269, L. 1971; Sec. 34, Ch. 100, L. 1973), relating to the unified investment plan for investment funds, were repealed by Sec. 9, Ch. 298, Laws 1973. For new law, see secs. 79-308 to 79-311.

79-1206 to 79-1209. (5668.24 to 5668.27) Repealed.**Repeal**

Sections 79-1206 to 79-1209 (Secs. 6 to 9, Ch. 70, L. 1929; Secs. 10 to 12, Ch. 176, L. 1953; Secs. 18, 19, Ch. 147, L. 1963; Sec. 35, Ch. 100, L. 1973), relating to investment of the trust and legacy fund, the

supreme court, power of the board of land commissioners to transfer securities, and the treasurer's account of the invested funds, were repealed by Sec. 9, Ch. 298, Laws 1973.

79-1211. (5668.29) Repealed.**Repeal**

Section 79-1211 (Sec. 11, Ch. 70, L. 1929; Sec. 13, Ch. 176, L. 1953; Sec. 20, Ch. 147, L. 1963; Sec. 36, Ch. 100, L. 1973), relat-

ing to transfer of interest earned from trust and legacy fund pro rata to each subfund, was repealed by Sec. 9, Ch. 298, Laws 1973.

79-1212. (5668.30) Payments from Montana trust and legacy fund.

The principal, and any part thereof, of each and every subfund constituting the Montana trust and legacy fund shall be subject to payment at any time when due under the statutory provisions applicable thereto and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular subfund arises.

History: En. Sec. 12, Ch. 70, L. 1929; amd. Sec. 21, Ch. 147, L. 1963; amd. Sec. 37, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "constitutional and" before "statutory provisions applicable thereto."

79-1213, 79-1214. (5668.31, 5668.32) Repealed.**Repeal**

Sections 79-1213, 79-1214 (Secs. 13, 14, Ch. 70, L. 1929; Secs. 14, 15, Ch. 176, L. 1953; Secs. 22, 23, Ch. 147, L. 1963), re-

lating to payments from funds administered under the unified investment plan, were repealed by Sec. 9, Ch. 298, Laws 1973.

79-1215. (5668.33) Records of treasurer—publicity to contributors given by legislature. The state treasurer shall keep in a book provided for that purpose, a permanent record of all gifts, donations, grants, legacies, bequests, devises and other contributions administered by the state board of investments under acts and parts of acts providing therefor or accepting the same on the part of the state of Montana. This record shall show the names of the givers, the purposes of the contributions and all essential facts relating thereto. A duplicate of this record shall be kept by the secretary of state. These records shall be preserved perpetually as a lasting memorial to the givers and their interest in society. The legislature shall from time to time make provisions for suitable publicity concerning these benefactors of their fellow men.

History: En. Sec. 15, Ch. 70, L. 1929; amd. Sec. 38, Ch. 100, L. 1973; amd. Sec. 10, Ch. 298, L. 1973.

Amendments

Chapter 100, Laws of 1973, substituted "the trust and legacy fund statutes" at the end of the first sentence for "article XXI of the constitution and acts and parts of acts carrying this part of the constitution into effect."

Chapter 298, Laws of 1973 substituted "state board of investments" for "state board of land commissioners" in the first sentence; substituted "acts and parts of acts providing therefor or accepting the same on the part of the state of Montana" at the end of the first sentence for "article XXI of the constitution and acts and parts

Compiler's Notes

This section was amended twice in 1973, once by Ch. 100 and once by Ch. 298. Neither amendatory act mentioned the other. They appear to conflict in the language used at the end of the first sentence. Since the only change made by Ch. 100 was in the conflicting language, and since Ch. 298 was later in time of approval, the compiler has used the language of Ch. 298 above.

of acts carrying this part of the constitution into effect"; and substituted "legisla-

ture" for "legislative assembly" in the final sentence.

79-1216. (5668.34) Repealed.

Repeal

Section 79-1216 (Sec. 16, Ch. 70, L. 1929; Sec. 16, Ch. 176, L. 1953), relating to re-

ports by the state treasurer, was repealed by Sec. 9, Ch. 298, Laws 1973.

CHAPTER 16—INDIAN WELFARE FUNDS—ADMINISTRATION

79-1602. (5668.15) Repealed.

Repeal

Section 79-1602 (Sec. 2, Ch. 65, L. 1927), relating to expenditure of federal funds

on behalf of Indians, was repealed by Sec. 1, Ch. 198, Laws 1973.

CHAPTER 20—BOND VALIDATING ACT

Section

79-2001. Short title of act.

79-2002. Definitions.

79-2003. Validation of bonds heretofore issued.

79-2004. Act does not apply to pending actions.

79-2001. Short title of act. This act may be cited as "The 1974 Bond Validating Act."

History: En. Sec. 1, Ch. 68, L. 1974.

Compiler's Notes

Chapter 68 of Laws 1974 was substituted for Ch. 145, Laws 1973 and assigned section numbers identical with those of the 1973 law. Previous bond validating acts enacted since 1935 were: Ch. 6, Laws 1937; Ch. 164, Laws 1939; Ch. 45, Laws 1941; Ch. 117, Laws 1943; Ch. 196, Laws 1945; Ch. 81, Laws 1947; Ch. 2, Laws 1953; Ch. 5, Laws 1955; Ch. 4, Laws 1957; Ch. 16, Laws 1959; Ch. 19, Laws 1961; Ch. 100, Laws 1963; Ch. 75, Laws 1965; Ch. 96, Laws 1967; Ch. 43, Laws 1969; Ch. 208, Laws 1971.

Title of Act

An act validating, ratifying, approving and confirming bonds and other instruments or obligations, heretofore issued by public bodies of this state, and all proceedings heretofore taken by such public bodies, to authorize and issue such bonds, instruments and other obligations, however described, and providing that this act may be cited as "The 1974 Bond Validating Act"; containing a repealing clause and providing an effective date.

79-2002. Definitions. The following terms, wherever used or referred to in this act, shall have the following meanings:

(1) The term "public body" shall include a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state of Montana, and shall also include the state board of education, the state board of examiners, the state water conservation board, the state highway commission, or any other governmental agency of this state.

(2) The term "bonds" shall include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on spe-

cific revenues, income or property of a public body, including all instruments or obligations payable from a special fund.

History: En. Sec. 2, Ch. 68, L. 1974.

79-2003. Validation of bonds heretofore issued. All bonds heretofore issued by any public body of this state, and all proceedings heretofore taken for the authorization and issuance of such bonds, for the levy, establishment, pledge and appropriation of taxes, special assessments and other charges and revenues to pay such bonds, and for the sale, exchange, execution and delivery thereof, are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing board or commission or officers thereof, to authorize and issue such bonds, or to sell, exchange, execute or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings or in such sale, exchange, execution or delivery, and bonds of such public bodies, whether heretofore issued or hereafter issued under the authority of proceedings heretofore taken, are and shall be binding, legal, valid and enforceable obligations of such political body.

History: En. Sec. 3, Ch. 68, L. 1974.

79-2004. Act does not apply to pending actions. This act shall not apply to or affect any action or appeal instituted on or before January 1, 1974, in which the validity of any such proceedings or of any such bonds is at issue.

History: En. Sec. 4, Ch. 68, L. 1974.

Effective Date

Repealing Clause

Section 5 of Ch. 68, Laws 1974 read "All acts and parts of acts in conflict with this act are repealed."

Section 6 of Ch. 68, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 4, 1974.

CHAPTER 22—LONG-RANGE BUILDING PROGRAM BONDS

Section

- 79-2201. Definitions and establishment of funds.
- 79-2202. Long-range building program bonds.
- 79-2203. Sinking fund account.
- 79-2204. Waiver of security provisions.
- 79-2205. Authorization of bonds.

79-2201. Definitions and establishment of funds. (1). * * * [Same as parent volume.]

(2) Long-range building program bonds mean and include all series of bonds issued to finance any portion of the long-range building program or to refund outstanding bonds, as authorized in this chapter.

(3). * * * [Same as parent volume.]

(4) Clearance fund account means a separate long-range building program subfund which is created within the bond and insurance clearance fund established in section 79-410, and shall be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the long-range building program,

upon order of the department of administration acting within the limits of the authority conferred upon it by the legislative assembly.

(5) Board, department and treasurer mean the state board of examiners, department of administration and state treasurer, respectively.

History: En. Sec. 1, Ch. 276, L. 1965; amd. Sec. 1, Ch. 510, L. 1973.

and substituted references to the department of administration for references to the state controller in subsections (4) and (5).

Amendments

The 1973 amendment deleted "as authorized in section 79-2202" after "bonds issued" in subsection (2); added "or to refund outstanding bonds, as authorized in this chapter" at the end of subsection (2);

Cross-References

Board of examiners continued in department of administration, sec. 82A-206.

79-2202. Long-range building program bonds. (1) When authorized by the vote of two-thirds (2/3) of the members of each house of the legislature, or of a majority of the electors voting thereon if so provided by law, and within the limits of such authorization and the further limitations in this section, the board may issue and sell bonds of the state of Montana in such manner as it shall deem necessary and proper to provide funds to finance the long-range building program. Bonds may be issued hereunder to provide funds for the payment or redemption of the outstanding War Veterans' Compensation Bonds and World War I Veterans' Compensation Bonds issued pursuant to Initiative No. 54, and the amendment thereof, chapter 270, Laws of 1963, and long-range building program bonds issued under this section. The full faith and credit and taxing powers of the state of Montana shall be pledged for the payment of all bonds issued pursuant to this chapter after January 1, 1973, with all interest thereon and premiums payable upon the redemption thereof.

(2) Each series of such bonds shall be issued by the board upon request of the department of administration, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest at such rate or rates, maturing at such times not exceeding thirty (30) years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of such fiscal agency of the state of Montana, as the board shall determine subject to the limitations contained in this section.

(3) In the issuance of each series of such bonds, the amount, maturities and interest rates thereof shall be fixed in such manner that the maximum amount of principal and interest to become due in any subsequent fiscal year, on all such bonds then outstanding and on the series so to be issued, will not exceed fifty per centum (50%) of the average annual amount collected during the three (3) then next preceding fiscal years, from the special taxes pledged by law to the sinking fund account at the time of such issuance; except that this provision shall not constitute a covenant of the state for the security of the bonds issued pursuant to this chapter after January 1, 1973, and the state reserves the right to amend this subsection (3) in any manner after all bonds issued prior to that

date, and the interest thereon, have been fully paid or the state's liability thereon has been otherwise fully discharged.

(4). * * * [Same as parent volume.]

(5) All proceeds of bonds issued hereunder shall be deposited in the clearance fund account, except that any premiums and accrued interest received shall be deposited in the sinking fund account. For the purposes set forth in subdivision (1) hereof, the state treasurer acting by and with the approval of the state board of examiners may set aside such funds as may be necessary to assure the redemption, or payment at maturity, of all of the outstanding War Veterans' Compensation Bonds and World War I Veterans' Compensation Bonds and as may be necessary or required to fulfill the obligations of the state of Montana by virtue thereof. With such funds the state treasurer with the approval of the state board of examiners is hereby authorized to call said bonds for redemption in accordance with the provisions thereof, at any redemption date, to pay said bonds on the maturity dates thereof, to deposit securities in escrow for the purpose of assuring such payments at future dates, and to take such other steps as may be necessary to fulfill all of the obligations of the state of Montana existing under the provisions of said bonds and the laws and resolutions authorizing the same.

(6) The state board of examiners is hereby authorized to employ a fiscal agent to assist in the performance of its duties hereunder.

History: En. Sec. 2, Ch. 276, L. 1965; amd. Sec. 2, Ch. 318, L. 1967; amd. Sec. 1, Ch. 146, L. 1969; amd. Sec. 1, Ch. 222, L. 1971; amd. Sec. 2, Ch. 510, L. 1973.

Amendments

The 1967 amendment added what is now the second sentence of subsection (1); added the second and third sentences of subsection (5); and added subsection (6).

The 1969 amendment increased the maximum interest rate specified in subsection (2) from five per cent to five and one-half per cent per annum.

The 1971 amendment deleted from subsection (2) the clause limiting interest rates to five and one-half per cent per annum; and made a minor change in phraseology.

The 1973 amendment substituted "by the vote of two-thirds ($\frac{2}{3}$) of the members of each house of the legislature, or of a majority of the electors voting thereon if so provided by law" near the beginning of subsection (1) for "by the legislative assembly"; substituted the final sentence of subsection (1) for a second sentence providing that the bonds should never become a debt of the state; substituted a reference to the department of administration in subsection (2) for a reference to the controller; added the final part of subsection (3), beginning "except that this provision shall not constitute a covenant"; and made minor changes in phraseology and punctuation.

79-2203. Sinking fund account. (1) From and after the pledge and appropriation of any special tax to the sinking fund account, as provided and contemplated in this section, such tax shall continue in force and shall be available and shall be pledged and appropriated for the payment of long-range building program bonds, and all moneys received from the collection thereof shall be deposited by the treasurer to the credit of the sinking fund account. No special taxes pledged to the sinking fund account on January 1, 1973, shall be discontinued or diverted to other funds until all bonds issued pursuant to this chapter prior to that date and the interest thereon have been fully paid or the state's liability thereon has been fully discharged, except to the extent, if any, that the right so

to do has been reserved in the resolutions authorizing the issuance of such bonds. Subject to the foregoing provisions of this subsection (1), the state reserves the right to modify from time to time the nature and amount of special taxes to be deposited to the credit of the sinking fund account.

(2). * * * [Same as parent volume.]

(3) Money at any time received in the sinking fund account in excess of the principal, interest and reserve requirements stated in subsection (2) shall be transferred by the treasurer to the general fund. If the balance at any time on hand in the sinking fund account is not sufficient for compliance with subsection (2), the treasurer shall credit to said account an amount sufficient to restore said balance from the next collections of the special taxes appropriated to said account, and from any other collections of taxes appropriated to the general fund, not exceeding the aggregate amount theretofore transferred from the sinking fund account to the general fund.

(4) The state reserves the power, by enactment of the legislative assembly or the people, to levy, impose and assess and to pledge and appropriate to the sinking fund account any tax specially designated therein, or any specified amount or percentage of the collections of such special tax. The state also reserves the power to appropriate any funds designated by enactment of the legislative assembly or the people for the redemption and prepayment of any long-range building program bonds, or to authorize the issuance and sale of bonds for the purpose of refunding any such outstanding bonds or interest thereon, upon such terms and conditions as may be provided in said enactments and consistent with covenants and agreements made for the security of the outstanding bonds. Refunding bonds issued in advance of the maturity of the bonds refunded shall be issued only subject to the conditions stated in subsection (3) of section 79-2202, substituting for this purpose the principal and interest requirements of the refunding bonds for those of the bonds refunded. Nothing herein shall prevent the board from issuing and selling refunding bonds, payable from the sinking fund account, to provide funds for payment of principal or interest due on long-range building program bonds, when and if and to the extent that the sinking fund account is insufficient for this purpose.

(5) The state pledges and appropriates, and directs to be credited as received to the sinking fund account, eleven per centum (11%) of all money received from the collection of the income tax and the corporation license tax referred to in section 84-1901, and such additional amount of said taxes, if any, as may at any time be needed to comply with the principal and interest and reserve requirements stated in subsection (2) of this section; provided that no more than eleven per centum (11%) of such tax collections shall be deemed to be pledged for the purpose of subsection (3) of section 79-2202. The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of said taxes.

(6) The state pledges and appropriates and directs to be credited to the sinking fund account fifteen per centum (15%) of all money

received from the collection of the nine cents (9¢) excise tax on cigarettes which is levied, imposed and assessed by section 84-5606, subdivision (2). The state also pledges and appropriates and directs to be credited as received to the sinking fund account all money received from the collection of each of the excise taxes on cigarettes which are levied, imposed and assessed by section 84-5606, subdivisions (3) and (4), as amended, after the payment and redemption in full of the outstanding bonds for which said taxes have heretofore been pledged and appropriated, or after the necessary funds have been set aside for such payment and redemption as provided in this chapter. The state also pledges and appropriates and directs to be credited as received to the sinking fund account all money received from the collection of the taxes on other tobacco products which are or may hereafter be levied, imposed and assessed by law for that purpose including the tax levied, imposed and assessed by section 84-6802, R. C. M. 1947. Nothing herein shall impair or otherwise affect the provisions and covenants contained in the resolutions authorizing the War Veterans' Compensation Bonds, the World War I Veterans' Compensation Bonds or the presently outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of all taxes referred to in this subdivision (6).

History: En. Sec. 3, Ch. 276, L. 1965; amd. Sec. 3, Ch. 318, L. 1967; amd. Sec. 2, Ch. 222, L. 1971; amd. Sec. 3, Ch. 510, L. 1973.

Amendments

The 1967 amendment, in subsection (5), increased appropriations to the sinking fund from 5 per centum to 11 per centum; in subsection (6), deleted "After approval through initiative or referendum by a majority of the electors voting at an election prior to January 1, 1967," at the beginning of the subsection; deleted "upon such approval also" before "pledges"; substituted "said taxes have" for "any such tax has" before "heretofore"; added "or after the necessary funds * * * in this act" at the end of the first sentence, now the second sentence; and added the last three sentences.

The 1971 amendment inserted a new first sentence in subsection (6); deleted "and other tobacco products" following "cigarettes" in the second sentence of sub-

section (6); added at the end of the third sentence of subsection (6) the clause referring to the tax imposed by section 84-6802; and made minor changes in phraseology.

The 1973 amendment deleted "irrevocably" before "pledged and appropriated" in the first sentence of subsection (1); deleted "so long as any such bonds or the interest thereon remains unpaid" from the end of the first sentence of subsection (1); added the second and third sentences to subsection (1); deleted "and not including ad valorem taxes on property" from the end of subsection (3); deleted "except an ad valorem tax on property" after "any tax specially designated therein" in the first sentence of subsection (4); deleted "provided that this power shall not be construed to constitute a pledge of the general credit of the state of Montana" from the end of the first sentence of subsection (4); and made minor changes in phraseology and style.

DECISIONS UNDER FORMER LAW

Approval by Voters

Because portions of the proceeds of the income tax, corporation license tax and tobacco tax are pledged for the security of bonds issued under this chapter, the issuance of new bonds would create a liability within the meaning of section 2, article XIII of the 1889 constitution, and such bonds may not be issued without ap-

proval by a vote of the people. *State ex rel. Ward v. Anderson*, 158 M 279, 491 P 2d 868, distinguishing *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907.

A holding that bonds issued under this chapter must be approved by the people will not be given retroactive effect; bonds issued in good faith before November 23,

1971, but without approval by a vote of the electors pursuant to section 2 of article XIII of the 1889 constitution, are

valid. State ex rel. Ward v. Anderson, 158 M 279, 491 P 2d 868.

79-2204. Waiver of security provisions. If so stated in any series of bonds issued hereunder, the purchasers and holders thereof may by their purchase and retention of the same waive in whole or in part the security otherwise made available for such bonds by any provision of this chapter.

History: En. Sec. 4, Ch. 276, L. 1965; amd. Sec. 4, Ch. 510, L. 1973.

Amendments

The 1973 amendment substituted "retention" for "redemption"; and made a minor change in style.

79-2205. Authorization of bonds. The board is authorized to issue and sell long-range building program bonds in an amount not exceeding two million five hundred thousand dollars (\$2,500,000), over and above the amount of the long-range building program bonds outstanding January 1, 1973, upon the conditions and in the manner stated in this chapter. The board is also authorized to issue and sell long-range building program bonds in such amount as may be required to provide funds for the payment or redemption of outstanding bonds as contemplated in section 79-2202, subdivisions (1) and (5) and section 72-2203, subdivision (4).

History: En. Sec. 5, Ch. 276, L. 1965; amd. Sec. 4, Ch. 318, L. 1967; amd. Sec. 2, Ch. 146, L. 1969; amd. Sec. 3, Ch. 222, L. 1971; amd. Sec. 5, Ch. 510, L. 1973.

Amendments

The 1967 amendment inserted "over and above the amount of the long-range building program bonds outstanding January 1, 1967," before "upon the conditions"; and added the last sentence.

The 1969 amendment substituted "eighteen million dollars (\$18,000,000)" for "thirteen million five hundred thousand dollars (\$13,500,000)" and substituted "previously authorized" for "outstanding January 1, 1967" before "upon the conditions" in the first sentence.

The 1971 amendment substituted "five million, five hundred thousand dollars (\$5,500,000) over and above the amount of

the long-range building program bonds outstanding January 1, 1971" in the first sentence for "eighteen million dollars (\$18,000,000), over and above the amount of the long-range building program bonds previously authorized."

The 1973 amendment changed the authorization in the first sentence from \$5,500,000 above the amount outstanding on January 1, 1971, to \$2,500,000 above the amount outstanding on January 1, 1973; and added to the end of the section the reference to subdivision (4), section 72-2203.

Effective Date

Section 3 of Ch. 146, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

DECISIONS UNDER FORMER LAW

Approval by Voters

Issuance of new bonds under this section created a liability within the meaning of section 2, article XIII of the former

constitution, and must be approved by a vote of the people before the bonds are issued. State ex rel. Ward v. Anderson, 158 M 279, 491 P 2d 868.

CHAPTER 23—LEGISLATIVE AUDIT ACT

Section	
79-2301.	Title and purpose of act.
79-2302.	Definitions.
79-2303.	[Transferred.]
79-2303.1.	Legislative audit committee created.
79-2304.	Legislative audit committee—appointment and term of members—officers.

- 79-2305. Meetings.
- 79-2306. [Transferred.]
- 79-2307. Appointment and qualifications of legislative auditor.
- 79-2308. Appointment of employees, consultants, and legal counsel.
- 79-2309. Term and removal of legislative auditor.
- 79-2310. Duties of legislative auditor.
- 79-2311. Audit standards and objectives.
- 79-2312. Recommendations of legislative auditor.
- 79-2314. Information from state agencies.
- 79-2315. Attorney general shall prosecute.

79-2301. Title and purpose of act. This act may be cited as "The Legislative Audit Act." Because the legislative assembly is responsible for authorizing the expenditure of public moneys, designating the sources from which moneys may be collected, shaping the administration to perform the work of state government, and is held finally accountable for fiscal policy, the legislative assembly should also be responsible for the audit of fiscal accounts and records so that it may be assured that its directives have been faithfully carried out. It is the intent of this act that each agency of state government be audited for the purpose of furnishing the legislative assembly with factual information vital to the discharge of its legislative duties.

History: En. Sec. 1, Ch. 249, L. 1967.

Title of Act

"The Legislative Audit Act" creating a legislative audit committee and the office of legislative auditor and providing for the audit of state agencies by the

legislative auditor; amending sections 82-1002, 82-1005, 82-1007, 82-1009, 82-110, 71-206, 4-347, 4-230, and 5-910, R. C. M. 1947; repealing sections 82-1014, 82-1015, 82-1016, 84-4403, 84-4404, and 84-4405, R. C. M. 1947, and providing an effective date.

79-2302. Definitions. In this act

(1) "State agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public moneys by virtue of an appropriation from the legislative assembly, or that handles money on behalf of the state, or that holds any trust or agency moneys from any source.

(2) "Committee" means the legislative audit committee.

History: En. Sec. 2, Ch. 249, L. 1967.

79-2303. [Transferred.]

Compiler's Notes

Section 2, Ch. 367, Laws of 1974 re-numbered this section as sec. 79-2304.

79-2303.1. Legislative audit committee created. (1) There is hereby created a legislative audit committee which shall be a permanent joint committee of the legislative assembly.

(2) There is hereby created and established the office of the legislative auditor. The director of this office shall be responsible for performing the duties imposed by this act.

History: En. 79-2303.1 by Sec. 1, Ch. 367, L. 1974.

79-2304. Legislative audit committee—appointment and term of members—officers. The legislative audit committee consists of four (4) members of the Senate and four (4) members of the House of Representatives appointed before the sixtieth legislative day of the first session of the biennium in the same manner as standing committees of the respective houses are appointed. A vacancy on the committee occurring when the legislative assembly is not in session shall be filled by the selection of a member of the legislative assembly by the remaining members of the committee. No more than two (2) of the appointees of each house shall be members of the same political party. A member of the committee shall serve until his term of office as a legislator ends or until the end of the sixtieth legislative day of the second session of the biennium following his appointment or until his successor is appointed, whichever occurs first. The committee shall elect one of its members as chairman and such other officers as it deems necessary.

History: En. Sec. 3, Ch. 249, L. 1967; Sec. 79-2303, R. C. M. 1947; amd. and redes. 79-2304 by Sec. 2, Ch. 367, L. 1974.

Amendments

The 1974 amendment renumbered this section; inserted "of the first session of the biennium" after "before the sixtieth

legislative day" in the first sentence; and rewrote the next-to-last sentence which read "Membership on the committee shall terminate with the termination of each member's term of office, or on December 31 of the year following the year in which the appointment was made, whichever event first occurs."

79-2305. Meetings. The committee shall meet as often as may be necessary, during and between legislative sessions, to advise and consult with the legislative auditor. Committee members shall be reimbursed from the appropriation to the office of the legislative auditor for their actual and necessary expenses incurred as a result of interim meetings, and paid compensation as provided by law for interim standing committees.

History: En. Sec. 4, Ch. 249, L. 1967; Sec. 79-2304, R. C. M. 1947; amd. and redes. 79-2305 by Sec. 3, Ch. 367, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "shall meet as often

as may be necessary, during and between legislative sessions" in the first sentence for "shall meet once each quarter"; added "and paid compensation as provided by law for interim standing committees" to the last sentence; and made a minor change in phraseology.

79-2306. [Transferred.]

Compiler's Notes

Section 4, Ch. 367, Laws of 1974 renumbered this section as sec. 79-2308.

79-2307. Appointment and qualifications of legislative auditor. The committee shall appoint the legislative auditor and set his salary. The legislative auditor shall hold a degree from an accredited college or university with a major in accounting or an allied field and shall have at least two (2) years experience in the field of governmental accounting and auditing.

History: En. Sec. 5, Ch. 249, L. 1967; Sec. 79-2305, R. C. M. 1947; redes. 79-2307 by Sec. 8, Ch. 367, L. 1974.

Amendments

The 1974 amendment renumbered this section.

79-2308. Appointment of employees, consultants, and legal counsel. The legislative auditor may appoint whatever employees and consultants are necessary to carry out the provisions of this act, within the limitations of legislative appropriations. The legislative auditor may employ legal counsel to conduct proceedings under this act.

History: En. Sec. 6, Ch. 249, L. 1967; Sec. 79-2306, R. C. M. 1947; amd. and redes. 79-2308 by Sec. 4, Ch. 367, L. 1974.

Amendments

The 1974 amendment renumbered this section; inserted "and consultants" after "employees" in the first sentence; and added the second sentence.

79-2309. Term and removal of legislative auditor. The legislative auditor is solely responsible to the legislative assembly. He shall hold office for a term of two (2) years beginning with July 1 of each odd-numbered year. The committee may remove him for misfeasance, malfeasance or nonfeasance in office at any time after notice and hearing.

History: En. Sec. 7, Ch. 249, L. 1967; Sec. 79-2307, R. C. M. 1947; redes. 79-2309 by Sec. 8, Ch. 367, L. 1974.

Amendments

The 1974 amendment renumbered this section.

79-2310. Duties of legislative auditor. The legislative auditor shall

- (1) Audit the financial affairs and transactions of every state agency.
- (2) Make a full, complete and written report of each audit. A copy of each report shall be furnished to the state department of administration, to the state agency which is audited, to each member of the committee, and to the legislative council.
- (3) Report immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency, and furnish the attorney general all information in his possession relative to the violation.
- (4) Report immediately in writing to the governor any instances of misfeasance, malfeasance or nonfeasance by a state officer or employee disclosed by the audit of a state agency.
- (5) Report immediately to the surety upon the bond of any official or employee when an audit discloses a shortage in the accounts of the official or employee. The failure to notify the surety does not release the surety from any obligation under the bond.
- (6) Report to the legislative assembly during the first week of each regular session in odd numbered years. Each biennial report shall contain, among other things, copies of, or summaries of audit reports on state agencies and any recommendations relating to such reports.
- (7) Have the authority to audit records of organizations and individuals receiving grants from or on behalf of the state to determine that the grants are administered in accordance with the grant terms and conditions. In each instance when a state agency enters into an agreement to grant resources under its control to others, the agency must obtain the written assent of the grantee to this audit access provision consenting to an audit of such grantee.

History: En. Sec. 8, Ch. 249, L. 1967; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-2308, R. C. M. 1947; amd. and redes. 79-2310 by Sec. 5, Ch. 367, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "state department of administration" for "state controller" in subdivision (2); inserted "and governor" after "attorney general" in subdivision (3); added "in odd numbered years" to the first sentence in subdivision (6); and added subdivision (7).

79-2311. Audit standards and objectives. The objectives of audits of state agencies conducted by the legislative auditor are to determine whether

(1) The agency is carrying out only those activities or programs authorized by the legislative assembly and is conducting them efficiently and effectively.

(2) Expenditures are made in furtherance of authorized activities and in accordance with the requirements of applicable laws and regulations.

(3) The agency collects and accounts properly for all revenues and receipts arising from its activities.

(4) The assets of the agency or in its custody are adequately safeguarded and controlled and utilized in an efficient manner.

(5) Reports and financial statements by the agency to the governor, the legislative assembly, and central control agencies disclose fully the nature and scope of the activities conducted, and provide a proper basis for evaluating the agency's operations.

History: En. Sec. 9, Ch. 249, L. 1967; Sec. 79-2309, R. C. M. 1947; redes. 79-2311 by Sec. 8, Ch. 367, L. 1974.

367, L. 1974, which renumbered the sections. The former section was, therefore, apparently replaced by the present section.

Compiler's Notes

This section is former section 79-2309 (see History). Former section 79-2311 was neither renumbered nor repealed by Ch.

Amendments

The 1974 amendment renumbered this section.

79-2312. Recommendations of legislative auditor. The reports of the legislative auditor may include comments, recommendations and suggestions, but he shall have no power to enforce them nor shall he otherwise influence or direct executive or legislative action.

History: En. Sec. 10, Ch. 249, L. 1967; Sec. 79-2310, R. C. M. 1947; amd. and redes. 79-2312 by Sec. 6, Ch. 367, L. 1974.

Amendments

The 1974 amendment renumbered this section.

79-2313. Repealed.

Repeal

Section 79-2313 (Sec. 13, Ch. 249, L. 1967; Sec. 1, Ch. 4, L. 1969), relating to

audit charges against earmarked money, was repealed by Sec. 2, Ch. 270, Laws 1971.

79-2314. Information from state agencies. (1) All state agencies shall aid and assist the legislative auditor in the auditing of books, accounts and records.

(2) The legislative auditor may examine at any time the books, accounts and records, confidential or otherwise, of a state agency; however, this shall not be construed as authorizing the publication of information which the law prohibits publishing.

(3) The head of each state agency shall immediately notify the legislative auditor in writing upon the discovery of any larceny, or embezzlement, actual or suspected involving state moneys or property under his control or for which he is responsible.

History: En. Sec. 12, Ch. 249, L. 1967; amd. Sec. 1, Ch. 270, L. 1971; Sec. 79-2312, R. C. M. 1947; amd. and redes. 79-2314 by Sec. 7, Ch. 367, L. 1974.

Amendments

The 1971 amendment added the third sentence.

The 1974 amendment renumbered this section.

Repealing Clause

Section 2 of Ch. 270, Laws 1971 read "Section 79-2313, R. C. M., 1947, is hereby repealed."

79-2315. Attorney general shall prosecute. The attorney general shall conduct on behalf of the state, all prosecutions for public offenses disclosed by an audit of a state agency performed by the legislative auditor. If the attorney general shall decline such prosecution or shall fail to commence action on a public offense within a reasonable time the county attorney of the appropriate county shall conduct on behalf of the state such prosecution.

History: En. Sec. 1, Ch. 4, L. 1974.

Effective Date

Section 2 of Ch. 4, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved January 28, 1974.

Title of Act

An act authorizing the attorney general to prosecute public offenses disclosed by audits of the legislative auditor; and to provide an effective date.

CHAPTER 24—REIMBURSEMENT OF GENERAL FUNDS FOR COSTS OF CENTRAL SERVICES

Section

- 79-2409. Definitions.
- 79-2410. Determination of administrative cost—charge against agency's fund.
- 79-2411. Factors in determining share of administrative cost—tax proceeds—highway purposes—constitutional restriction.
- 79-2412. Certification—statement—administrative cost due—deferment—transfer of funds.
- 79-2413. Funds unavailable—unable to pay—written request for deferment—requirements.
- 79-2414. Certification—advance payment—deferment—funds unavailable—transfer.
- 79-2415. Deferred advance payment—written request—advance applied against share of administrative cost—excess amount refunded.

79-2401 to 79-2408. Repealed.

Repeal

Sections 79-2401 to 79-2408 (Secs. 1 to 8, Ch. 11, L. 1969), relating to the state

board of review, were repealed by Sec. 103, Ch. 326, Laws of 1974.

79-2409. Definitions. Unless the context requires otherwise, in this chapter:

(1) "administrative costs" means the amounts expended by those state agencies which costs are attributable to the operations of all state agencies and a proration of any cost to, or expense of, the state for services of facilities provided for those state agencies which costs are attributable to the operations of all state agencies, for supervision or administration of the state government, or for services to the various state agencies.

(2) "department" means the department of administration provided for in Title 82A, chapter 2.

History: En. Sec. 9, Ch. 11, L. 1969;
amd. Sec. 37, Ch. 326, L. 1974.

Amendments

The 1974 amendment added subdivision (2); and made minor changes in style, punctuation and phraseology.

79-2410. Determination of administrative cost—charge against agency's fund. The department shall determine, and may at any time redetermine, which funds shall be charged a share of administrative costs as to the function supported by any such fund, and the amount which shall be charged against any fund as its fair share of administrative costs. These costs shall be a charge against any fund designated by the department.

History: En. Sec. 10, Ch. 11, L. 1969;
amd. Sec. 38, Ch. 326, L. 1974.

partment" in both sentences for "state board of review"; and made a minor change in punctuation.

Amendments

The 1974 amendment substituted "de-

79-2411. Factors in determining share of administrative cost—tax proceeds—highway purposes—constitutional restriction. In determining or redetermining the fair share, the department may consider such factors of cost distribution and cost estimation as it considers necessary. However, that as to the proceeds of those taxes, the use of which is restricted by the Montana constitution, the department shall assess only those administrative costs ascertained as being necessarily incurred in connection with highway purposes as set forth in the constitution.

History: En. Sec. 11, Ch. 11, L. 1969;
amd. Sec. 39, Ch. 100, L. 1973; amd. Sec.
39, Ch. 326, L. 1974.

tana constitution" in the second sentence; and substituted "the constitution" for "that article" at the end of the section.

Amendments

The 1973 amendment deleted "section 1b, of article XXI, of" before "the Mon-

The 1974 amendment substituted "department" in both sentences for "board"; and made a minor change in phraseology.

79-2412. Certification—statement—administrative cost due—deferment—transfer of funds. The department shall determine annually the fair share of administrative costs due and payable from each state agency. The department shall transmit to each state agency, from which administrative costs have been determined or redetermined to be due, a statement in writing setting forth the amount of the administrative costs due from the state agency, and stating that, unless a written request to defer payment is filed by the state agency with the department within thirty (30) days after the mailing of the statement by the department to the state agency, the department will direct the state treasurer to transfer the amount of the administrative costs from the special fund or funds chargeable therewith to the state general fund. The department shall specify on the statement the special fund appropriations to be charged at the time transfers are made covering the administrative costs.

History: En. Sec. 12, Ch. 11, L. 1969;
amd. Sec. 40, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" in the first sentence for

"board," and in the second and third sentences for references to "state controller"; substituted "determine annually" in the first sentence for "certify annually to the state controller the amount determined to be"; deleted from the end of

the first sentence "and shall certify forthwith to the controller any amount determined to be the fair share of administrative costs due and payable from any state agency"; and made minor changes in punctuation and phraseology.

79-2413. Funds unavailable—unable to pay—written request for deferment—requirements. If, upon receipt of the statement provided in section 79-2412, the state agency does not have funds available by law for the payment of the administrative costs, or if any transfer might, if effected, result in loss to the state or to any special fund affected, of any federal funds, or would be in violation of the constitution or any law of the United States, or if it has any other reason why the payment of the costs should not be made at the time specified on the statement, the state agency shall, prior to the expiration of the thirty (30) day period referred to in the statement, file with the department, a written request to defer payment of the administrative costs. The request shall set forth the reasons why the payment should be deferred. Upon receipt of a request, the department shall approve or disapprove the transfer of funds.

History: En. Sec. 13, Ch. 11, L. 1969; amd. Sec. 41, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "file with the department, a written request" near the end of the first sentence for "file with the controller, in duplicate, a written request"; substituted the last sentence for one reading "Upon receipt of

a request filed because of lack of availability of funds or because of any reason other than lack of availability of funds, the controller shall forthwith transmit one (1) copy of the request to the board; and shall defer action to effect the transfer of funds until the transfer has been approved by the board"; and made a minor change in style.

79-2414. Certification—advance payment—deferment—funds unavailable—transfer. The department may determine at any time during the year the amount, based upon experience of the preceding year, to be a reasonable advance for administrative costs to be made from the appropriation of each state agency supported from a fund, designated in accordance with section 79-2410. The department shall transmit to each state agency a statement in writing setting forth the amount of the advance, and stating that unless a written request to defer payment because of lack of availability of funds is filed by the state agency with the department within thirty (30) days after the mailing of the statement to the state agency, the department will transfer the amount of the advance from the special fund, or funds concerned, to the state general fund. The department shall specify on the statement the special fund appropriation to be charged.

History: En. Sec. 14, Ch. 11, L. 1969; amd. Sec. 42, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "The department may determine" in the first

sentence for "The board may certify at any time during the year to the state controller the amount as it determines"; substituted "department" for "controller" throughout the remainder of the section; and made minor changes in phraseology.

79-2415. Deferred advance payment—written request—advance applied against share of administrative cost—excess amount refunded. If, upon receipt of the statement provided in section 79-2414, the state agency does not

have funds available by law for the payment of the advance, the state agency shall, prior to the expiration of the thirty (30) day period referred to in the statement, file with the department a written request to defer payment of the advance. Upon receipt of a request, the department shall approve or disapprove the transfer of funds covering the advance referred to in the request. Any advance shall be applied against the state agency's fair share of administrative costs determined or redetermined as provided in sections 79-2412 and 79-2413. If the amount advanced exceeds the state agency's fair share of administrative costs, the department shall transfer from the state general fund to the special fund appropriation the excess amount advanced.

History: En. Sec. 15, Ch. 11, L. 1969;
amd. Sec. 43, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state controller" and "controller" throughout the section; substituted the second sentence for "Upon

receipt of a request, the controller shall forthwith transmit one (1) copy of the request to the board and shall defer action to effect the transfer of funds covering the advance referred to in the request until the transfer has been approved by the board"; and made minor changes in phraseology.

CHAPTER 25—EMERGENCY AND DISASTER FUND

Section

79-2501. Governor may authorize expenditure in case of emergency or disaster.

79-2502. Maximum biennial expenditure.

79-2503. Implementation and administration.

79-2501. Governor may authorize expenditure in case of emergency or disaster. The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is declared by the governor, to meet contingencies and emergencies arising from hostile attacks, riots or insurrections, epidemics of disease, plagues of insects, fires, floods or other acts of God resulting in damage or disaster to the works, building or property of the state or any political subdivision thereof, or which menace the health, welfare, safety, lives or property of any considerable number of persons in any county or community of the state, upon demonstration by the political jurisdiction that such political jurisdiction has exhausted all available emergency levies, that the emergency is beyond the financial capability of the political jurisdiction to respond, and for which no appropriation is available in sufficient amount to meet the emergency or disaster, or that federal funds available for such emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws.

History: En. Sec. 1, Ch. 409, L. 1971.

Title of Act

An act to provide an emergency and disaster fund for the governor to be implemented by the department of administra-

tion, authorizing the governor to expend not to exceed seven hundred fifty thousand dollars (\$750,000) per biennium from the general fund, and an immediate effective date.

79-2502. Maximum biennial expenditure. Whenever an emergency or disaster is declared by the governor, he is authorized to expend from

the general fund not to exceed seven hundred fifty thousand dollars (\$750,000), in any one (1) biennium.

History: En. Sec. 2, Ch. 409, L. 1971.

79-2503. Implementation and administration. The governor shall be charged with the implementation of the program, and the administration and development of rules and regulations for implementation of this act will be promulgated by the department of administration.

History: En. Sec. 3, Ch. 409, L. 1971.

Effective Date

Section 4 of Ch. 409, Laws 1971 read

"In order to preserve the public peace, health, welfare and safety, this act shall become effective upon its passage and approval." Approved March 18, 1971.

CHAPTER 26—INTEREST ON BONDS AND SPECIAL ASSESSMENTS OF POLITICAL SUBDIVISIONS

Section

79-2601. Definitions.

79-2602. Rate of interest on bonds to be determined by governing bodies—limitations and exceptions.

79-2603. Rate of interest on special assessments to be determined by governing bodies—limitations.

79-2601. Definitions. The following terms as used in this act have the following meanings: (1) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, special assessments, income or property of a political subdivision, including all instruments or obligations payable from a special fund.

(2) "Political subdivision" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other governmental subdivision of the state of Montana, but shall not include the state of Montana, the state board of examiners, the state water conservation board, the state highway commission or any other board, agency, or commission of the state of Montana.

(3) "Governing body" means the board, council, commission or other body charged with the general control of the issuance of bonds of a political subdivision.

History: En. Sec. 1, Ch. 234, L. 1971.

Title of Act

An act relating to the maximum rate of interest on bonds issued and special assessments levied and other evidence of indebtedness by political subdivisions and providing an effective date, and amending sections 11-2304, 11-2404, 16-2011, 75-7107,

75-7115, 75-7116, 75-7119, 75-7121, 11-2315, 16-2032, 11-982, 11-1307, 11-2218, 11-2214.2, 11-2226, 11-2227, 11-2231, 11-2249, 11-2277, 11-3717, 11-3910, 16-1620, 16-2002, 16-2046, 16-2604, 16-4517, 32-3121, 32-3123, 32-3502, 32-3805, 81-1003, 89-1701, 89-1705, 89-1801, 89-2348, 89-2501, 35-115, 47-124, 89-2502 and 89-3426, R. C. M. 1947.

79-2602. Rate of interest on bonds to be determined by governing bodies—limitations and exceptions. Bonds of a political subdivision shall bear interest at such rate or rates as its governing body shall determine,

except that no such rate shall exceed seven per cent (7%) except revenue bonds issued under the terms of sections 11-2401 through 11-2414, sections 11-2217 through 11-2221, and sections 11-4101 through 11-4110, R. C. M. 1947, which rate shall not exceed nine per cent (9%).

History: En. Sec. 2, Ch. 234, L. 1971.

79-2603. Rate of interest on special assessments to be determined by governing bodies—limitations. All special assessments levied by a political subdivision shall bear interest at such rate or rates as its governing body shall determine, except that no such rate shall exceed the greater of seven per cent (7%) per annum or, in the event that the special assessments are appropriated for the payment of principal and interest on bonds issued by the political subdivision, the rate of interest on said bonds.

History: En. Sec. 3, Ch. 234, L. 1971.

TITLE 80—STATE INSTITUTIONS

Chapter

1. Montana state school for the deaf and blind, 80-105, 80-107.
5. Montana state fair, Repealed—Section 173, Chapter 218, Laws of 1974.
14. State department of institutions, 80-1401 to 80-1403, 80-1405, 80-1406, 80-1407.1, 80-1410 to 80-1418.
15. Institutional industries, 80-1501.
16. Payments for the care of residents of institutions, 80-1601 to 80-1603, 80-1605, 80-1606.
17. Galen state hospital, 80-1701 to 80-1705.
19. State prison, 80-1903, 80-1905, 80-1908 to 80-1912.
21. Montana children's center, 80-2105, 80-2106.
22. Juvenile facilities, 80-2202 to 80-2206, 80-2209 to 80-2213.
23. Boulder river school and hospital, 80-2303 to 80-2310, 80-2312.
24. Warm Springs state hospital and mental health centers, 80-2401, 80-2401.1, 80-2402, 80-2403, 80-2405 to 80-2412.
25. Montana center for the aged, 80-2501, 80-2502.
26. Mental retardation—developmental disabilities, 80-2604 to 80-2625.

CHAPTER 1—MONTANA STATE SCHOOL FOR THE DEAF AND BLIND

Section

- 80-105. Eligibility of children for admittance.
80-107. Duration of attendance at school.

80-102. Montana state school for deaf, etc., independent institution, etc.

Compiler's Notes

Sections 75-302 to 75-309, referred to in this section, were repealed by Sec. 63, Ch. 2, Laws 1971.

80-105. Eligibility of children for admittance. On proper application being made therefor, deaf and blind children who are not more than eighteen (18) years of age residing within the state of Montana, and nonresident children, who are not more than eighteen (18) years of age, who are not mentally deficient, dangerously diseased in body, or of confirmed immorality, or incapacitated for useful instruction by reason of physical disability, may be admitted to such school.

History: En. Sec. 4, Ch. 182, L. 1943;
amd. Sec. 1, Ch. 282, L. 1967.

Amendments

The 1967 amendment deleted "who have

reached the age of five (5) and" after "blind children"; and substituted "who are not more than eighteen (18) years of age" for "between such ages" after "non-resident children."

80-107. Duration of attendance at school. Every child admitted to such school shall be entitled to attend such school until reaching the age of twenty-one (21) years unless the board of education and superintendent determine that attendance at the school will not benefit the child; provided, that nothing in this section shall be construed so as to prevent the suspension or expulsion of any child at any time for insubordination or other cause deemed good and sufficient by the board of education and superintendent.

History: En. Sec. 6, Ch. 182, L. 1943;
amd. Sec. 2, Ch. 282, L. 1967.

Amendments

The 1967 amendment deleted "for a period of ten (10) years, or" after "such school" and substituted "unless the board

of education and superintendent determine that attendance at the school will not benefit the child" after "twenty-one (21) years" for "if such age be reached before the expiration of such ten (10) year period. Any child who has attended the school for a period of ten (10) years,

but has not yet reached the age of twenty-one (21) years, with the consent and approval of the superintendent of the school, may petition the state board of education to remain in such school for an additional period of two (2) years, or until arriving at the age of twenty-one (21) years if such child will arrive at such

age before the expiration of such additional two (2) year period. The board shall consider the petition upon the scholastic record and the record as to obedience and morality of such child while in such school and if it finds it proper to do so may grant the same."

80-110. Data relating to deaf and blind children, etc.

Compiler's Notes

Section 75-1903, referred to in this sec-

tion, was repealed by Sec. 496, Ch. 5, Laws 1971.

CHAPTER 5—MONTANA STATE FAIR

(Repealed—Section 173, Chapter 218, Laws of 1974)

80-501 to 80-505. (1580, 1581, 3640, 3643, 3644) Repealed.

Repeal

Sections 80-501 to 80-505 (Secs. 1, 2, Ch. 47, L. 1911; Secs. 61, 64, 65, Ch. 216, L. 1921; Secs. 1, 2, Ch. 7, L. 1943;

Sec. 1, Ch. 142, L. 1947), relating to the Montana state fair, were repealed by Sec. 173, Ch. 218, Laws of 1974.

CHAPTER 14—STATE DEPARTMENT OF INSTITUTIONS

Section	
80-1401.	Purpose of department.
80-1402.	Definition of terms.
80-1403.	Institutions in department.
80-1405.	Powers and duties of department.
80-1406.	Warden and superintendents of institutions.
80-1407.1.	Powers and duties of board—hearings.
80-1410.	Establishment of juvenile correctional facilities.
80-1411.	Control and management of juvenile correctional centers—rules—special programs.
80-1412.	Youth forest camp—work program.
80-1413.	Participation by governing boards in research programs.
80-1414.	Aftercare agreement to be signed by child before release from juvenile facility to custody of department.
80-1415.	Control over minor so released vested in department.
80-1416.	Detention of child who violates aftercare agreement—delivery on request to department.
80-1417.	Removal of patients from state custodial institutions without permission of staff a misdemeanor—penalty.
80-1418.	Distribution of alcoholic beverages and drugs to patients of state custodial institutions a misdemeanor—penalty.

80-1401. Purpose of department. The department of institutions shall utilize at maximum efficiency the resources of state government in a co-ordinated effort to restore the physically or mentally disabled, to rehabilitate the violators of law, to sustain the vigor and dignity of the aged, to provide for children in need of temporary protection or correctional counseling, to train children of limited mental capacity to their best potential, to rededicate the resources of the state to the productive independence of its now dependent citizens, and to co-ordinate and apply the principles of modern institutional administration to the institutions of the state.

History: En. Sec. 1, Ch. 199, L. 1965;
amd. Sec. 38, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted "The department of institutions shall utilize"

in the first sentence for "The purpose of state department of institutions is to the legislative assembly in creating a utilize."

80-1402. Definition of terms. Unless the context requires otherwise, in Title 80:

(1) "Department" means the department of institutions provided for in Title 82A, chapter 8.

(2) "Director" means the director of institutions provided for in section 82A-801.

(3) "Board" means the board of institutions provided for in section 82A-806.

(4) "Institution" means any of the institutions listed in section 80-1403.

History: En. Sec. 2, Ch. 199, L. 1965; amd. Sec. 39, Ch. 120, L. 1974.

"board" throughout the section; inserted "provided for in Title 82A, chapter 8" in subdivision (1); inserted "provided for in section 82A-801" in subdivision (2); inserted "provided for in section 82A-806" in subdivision (3); and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "Title 80" for "act" in the first sentence; deleted "state" before "department" and

80-1403. Institutions in department. (1) The following institutions are in the department:

- (a) Galen state hospital
- (b) Montana veterans' home
- (c) State prison
- (d) Montana children's center
- (e) Mountain View school
- (f) Pine Hills school
- (g) Boulder river school and hospital
- (h) Warm Springs state hospital
- (i) Montana center for the aged
- (j) Swan river youth forest camp
- (k) Eastmont training center

(1) Any other institution which provides care and services for juvenile delinquents including but not limited to youth forest camps and juvenile reception and evaluation centers.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislative assembly.

History: En. Sec. 3, Ch. 199, L. 1965; amd. Sec. 1, Ch. 320, L. 1967; amd. Sec. 1, Ch. 280, L. 1969; amd. Sec. 40, Ch. 120, L. 1974.

institutions" in the first sentence; substituted "Any other institution which provides" in subdivision (1) for "Such other institutions or departments established or to be established in the future having the function or purpose of providing" and made minor changes in phraseology, punctuation and style.

Amendments

The 1967 amendment changed the names of the institutions listed in subdivisions (a) and (e) through (h), and added subdivisions (j) and (l).

The 1969 amendment inserted what is now subdivision (k).

The 1974 amendment substituted "department" for "state department of

Effective Date

Section 2 of Ch. 280, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 10, 1969.

80-1404. Repealed.**Repeal**

Section 80-1404 (Sec. 4, Ch. 199, L. 1965; Sec. 2, Ch. 320, L. 1967), relating

to appointment of a director of the department of institutions, was repealed by Sec. 96, Ch. 120, Laws of 1974.

80-1405. Powers and duties of department. The department shall:

(1) Adopt rules for the admission, custody, transfer, and release of residents of institutions except as otherwise provided by law. However, no such rules shall amend or alter the statutory powers and duties of the state board of pardons.

(2) Subject to the functions of the department of administration, lease or purchase lands for use by institutions, and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration the needs of all institutions for the food products that can be grown or produced on the lands, and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions.

(3) Utilize the staff and services of other state agencies and units of the university of Montana, within their respective statutory functions, to carry out the purposes of this act.

(4) Propose programs to the legislative assembly to meet the projected long-range needs of institutions, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions.

(5) Encourage the establishment of programs at the local level for the prevention and rehabilitation of physical and mental disability.

History: En. Sec. 5, Ch. 199, L. 1965; amd. Sec. 3, Ch. 320, L. 1967; amd. Sec. 33, Ch. 93, L. 1969; amd. Sec. 41, Ch. 120, L. 1974.

Amendments

The 1967 amendment added a subdivision relating to appointment and compensation of wardens and superintendents (deleted by the 1974 amendment).

The 1969 amendment substituted a subdivision relating to reports as provided under section 82-4002 (deleted by the 1974 amendment) for a provision requiring annual reports to the governor and biennial reports to the legislature.

The 1974 amendment substituted "department" for "board" in the first sen-

tence; deleted former subdivision (1) relating to adoption of general rules and regulations; deleted former subdivision (2) which read "Report as provided in section 2 [82-4002] of this act"; deleted former subdivision (3) relating to review of budget requests; redesignated the remaining subdivisions accordingly; substituted "Subject to the functions of the department of administration" in present subdivision (2) for "Subject to the provisions of 'The Department of Administration Act'"; deleted a final subdivision relating to appointment and compensation of wardens and superintendents; and made minor changes in phraseology, punctuation and style.

80-1406. Warden and superintendents of institutions. The warden or superintendents of institutions in the department are responsible for the immediate management and control of their respective institutions, subject to the general policies and programs established by the department.

History: En. Sec. 6, Ch. 199, L. 1965; amd. Sec. 42, Ch. 120, L. 1974.

Amendments

The 1974 amendment deleted a former second sentence providing that wardens

and superintendents may appoint assistants and employees subject to approval by the director and board; deleted a former third sentence relating to appointment of local advisory committees; and deleted a former fourth sentence re-

lating to the council of superintendents (see parent volume).

Discretionary Authority of Warden of State Prison

Actions of warden of state prison in denying inmate access to money deposited in his spending account would not be interfered with in light of wide discretionary powers granted warden and in absence of clear showing that warden abused discretion. *Petition of Spurlock*, 151 M 380, 443 P 2d 5.

Sovereign Immunity

State prison which participated in forest fire-fighting effort by lending a

bulldozer, a guard and two prisoners to operate the bulldozer, all of whom were under the direction of the United States forest service during the fighting of the fire, was immune under doctrine of sovereign immunity from suit for injuries to person who, several days after fire had been extinguished, was injured when wind caused an uprooted tree which had been leaning against another tree to fall on him; since prison was attempting to protect its own land adjacent to the fire area, it was engaged in a governmental rather than a proprietary function. *Kish v. Montana State Prison*, — M —, 505 P 2d 891.

80-1407. Repealed.

Repeal

Section 80-1407 (Sec. 7, Ch. 199, L. 1965), relating to the appointment and

qualifications of members of the board of institutions, was repealed by Sec. 96, Ch. 120, Laws of 1974.

80-1407.1. Powers and duties of board—hearings. (1) The board of institutions shall:

(a) Act in an advisory capacity to the department. "Advisory capacity," as used in this subsection, means the board may furnish advice, gather information, make recommendations, and does not mean administering a program or function or setting policy.

(b) Hear grievances of residents of institutions within the department or employees of the department, as provided for in this subsection. A resident of an institution within the department or an employee of the department who has a grievance, and has exhausted all other administrative remedies within the department, is entitled to a hearing before the board for a resolution of the grievance. A grievance of an employee means an employee's dissatisfaction concerning a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action. A grievance of a resident means any serious matter affecting his care or treatment.

(2) No actions by the board may infringe upon the statutory functions of the board of pardons.

History: En. 80-1407.1 by Sec. 43, Ch. 120, L. 1974.

80-1408, 80-1409. Repealed.

Repeal

Sections 80-1408 and 80-1409 (Secs. 8, 9, Ch. 199, L. 1965), relating to the of-

ficers, payment of expenses, and functions of the board of institutions, were repealed by Sec. 96, Ch. 120, Laws of 1974.

80-1410. Establishment of juvenile correctional facilities. The department, within the annual or biannual budgetary appropriation, may establish, maintain, and operate facilities to properly diagnose, care for, train, educate, and rehabilitate children in need of these services. The children must be ten

(10) years of age or older and under twenty-one (21) years of age. The facilities include but are not limited to the Mountain View school, the Pine Hills school, and the youth forest camp.

History: En. Sec. 8, Ch. 320, L. 1967; amd. Sec. 44, Ch. 120, L. 1974.

Title of Act

An act relating to the powers and duties of the board of institutions and to certain institutions under its management and control; providing the board's power to fix salaries of superintendents of institutions with the approval of the board of examiners if the salaries of superintendents or wardens are not specified by the legislative assembly in the appropriation to the department of institutions; changing the name of certain institutions; generally revising and amending the laws relating to juvenile correctional institutions; providing for the control and management of juvenile correctional facilities including juvenile correctional facilities

hereafter authorized by the legislature; providing for transferring of prisoners sent to the state prison who are under the age of twenty-one (21) to juvenile correctional facilities; amending sections 80-1403, 80-1404, 80-1405, 80-1601, 80-1701, 80-1702, 80-1703, 80-2202, 80-2203, 80-2204, 80-2205, 80-2206, 80-2209, 80-2210, 80-2211, 80-2212, 80-2301, 80-2302, 80-2303, 80-2304, 80-2305, 80-2306, 80-2307, 80-2308, 80-2309, 80-2401, 80-2402, 80-2404, repealing 80-2201, 80-2208, R. C. M. 1947.

Amendments

The 1974 amendment substituted "department" for "state department of institutions" in the first sentence; and made minor changes in phraseology and punctuation.

80-1411. Control and management of juvenile correctional centers—rules—special programs. The facilities provided for in section 80-1410 shall exercise their functions under the supervision, and general management of the department. Except where otherwise provided by law, the department by rules shall establish standards of care, policies of admission, transfers, discharge, and aftercare supervision in order to provide adequate care for children and adequate service to the courts. The department shall develop special programs within each facility which are adaptable to the particular needs of its operation.

History: En. Sec. 9, Ch. 320, L. 1967; amd. Sec. 45, Ch. 120, L. 1974.

Amendments

The 1974 amendment deleted "and from time to time it shall order such changes

in the policies, conduct or management of the facilities as seems desirable" after "aftercare supervision" in the second sentence; and made minor changes in phraseology and punctuation.

80-1412. Youth forest camp—work program. In the case of a youth forest camp, a work program shall be provided by the department of natural resources and conservation, and shall be carried out with co-operation between that department and the camp superintendent.

History: En. Sec. 10, Ch. 320, L. 1967; amd. Sec. 46, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of natural resources and conservation" for "Montana state forester"; and made minor changes in phraseology.

80-1413. Participation by governing boards in research programs. The department may direct a penal, corrective, or custodial institution of the state to participate in and co-operate with programs of research and development being conducted and carried on by any units of the Montana university system, by any of the other educational institutions of the state of Montana, or by any foundation or agency thereof, in the fields of science,

health, education, and natural resources. These programs may include the voluntary participation of the inmates of the institution in testing and experimental work conducted as a part thereof. Any funds received from the authorized programs may be shared with the participating inmates or otherwise held and used for the welfare and rehabilitation thereof, and shall not become a part of the regular budgeted operation of the institution.

History: En. Sec. 1, Ch. 98, L. 1967; amd. Sec. 47, Ch. 120, L. 1974.

Title of Act

An act authorizing voluntary participation in programs of research and development in the fields of science, health, education and natural resources by the governing boards of state penal, corrective or custodial institutions, and by the inmates thereof for use in welfare and rehabilitation work within said institutions.

Amendments

The 1974 amendment substituted "The department may direct a penal, corrective, or custodial institution of the state to participate" in the first sentence for "The duly constituted and governing board of any penal, corrective, or custodial institution of the state of Montana is hereby enabled and authorized to participate"; and made minor changes in phraseology and punctuation.

80-1414. Aftercare agreement to be signed by child before release from juvenile facility to custody of department. A child released by the department from one of the state juvenile facilities to the supervision, custody, and control of the department shall, before his release, sign an aftercare agreement containing the terms and conditions under which the child is released.

History: En. Sec. 1, Ch. 158, L. 1969; amd. Sec. 48, Ch. 120, L. 1974.

lated the terms of his or her aftercare agreement.

Title of Act

An act providing for the apprehension and detention of a child released from the custody of one of the state juvenile facilities to the supervision, custody and control of the aftercare division of the department of institutions, who has vio-

Amendments

The 1974 amendment substituted "department" for "department of institutions" and for "aftercare division of the department of institutions"; and made minor changes in phraseology and punctuation.

80-1415. Control over minor so released vested in department. The department has control over a child released under section 80-1414 until he attains the age of eighteen (18) years, subject, however, to the general jurisdiction of the various courts of Montana for acts committed by the child while under the control of the department.

History: En. Sec. 2, Ch. 158, L. 1969; amd. Sec. 29, Ch. 94, L. 1973; amd. Sec. 49, Ch. 120, L. 1974.

The 1974 amendment substituted "department" for "department of institutions"; and made minor changes in phraseology and punctuation.

Amendments

The 1973 amendment reduced the specified age from twenty-one to eighteen years.

80-1416. Detention of child who violates aftercare agreement—delivery on request to department. A child who violates the terms and conditions of his aftercare agreement may be detained, by the department or by a law officer of the state, county, or city of the state, upon certificates in writing to the officer by the department to the effect that the child has violated the terms and conditions of his aftercare agreement. Upon detention by the law officer the child shall, on request, be delivered to the custody of the department, and the department may:

- (1) Return the child to one of the juvenile facilities of the state; or
- (2) Continue the child under the supervision of the department.

History: En. Sec. 3, Ch. 158, L. 1969; amd. Sec. 50, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted "may be detained, by the department" near the beginning of the section for "may be detained, day or night, by the department of institutions"; substituted "department" for "director of the aftercare division of the department of institutions" near the middle of the main

paragraph; substituted "department" for "aftercare division of the department of institutions" at the end of the main paragraph and for "aftercare division" in subdivision (2); and made minor changes in phraseology and punctuation.

Effective Date

Section 4 of Ch. 158, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

80-1417. Removal of patients from state custodial institutions without permission of staff a misdemeanor—penalty. A person other than a parent or one having legal custody of the person of the patient or inmate who permits or assists a resident patient or inmate of a state custodial institution to leave the institution without permission from the properly authorized member of the staff or proper court order, is guilty of a misdemeanor and upon conviction, is punishable by imprisonment in a county jail not exceeding six (6) months, or by a fine not exceeding five hundred dollars (\$500), or both.

Nothing herein is to be construed to conflict with laws relative to inmates of the Montana state prison.

History: En. Sec. 1, Ch. 361, L. 1971.

Title of Act

An act to prohibit the removal of

patients from state custodial institutions without permission of the staff.

80-1418. Distribution of alcoholic beverages and drugs to patients at state custodial institutions a misdemeanor—penalty. A person who knowingly sells or distributes, or attempts to sell or distribute, alcoholic beverages or drugs to the resident patients or inmates of a state custodial institution without permission of the medical staff, is guilty of a misdemeanor and upon conviction, is punishable by imprisonment in a county jail not exceeding six (6) months, or by a fine not exceeding five hundred dollars (\$500), or both.

Nothing herein is to be construed to conflict with laws relative to inmates of the Montana state prison.

History: En. Sec. 1, Ch. 362, L. 1971.

Title of Act

An act to prohibit the sale or distribu-

tion of alcoholic beverages and drugs to patients at state custodial institutions.

CHAPTER 15—INSTITUTIONAL INDUSTRIES

Section

80-1501. Industrial activities permitted at institutions—powers of department— incentive pay to inmates.

80-1501. Industrial activities permitted at institutions—powers of department—incentive pay to inmates. The department of institutions may:

(1) Establish industries in institutions which will result in the production or manufacture of goods that may be needed by institutions and other state agencies and that will assist in the rehabilitation of residents in institutions;

(2) Print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

(3) Fix the sale price for goods produced or manufactured at institutions. Prices shall not exceed prices existing in the open market for goods of comparable quality.

(4) Require institutions to purchase needed goods from other institutions;

(5) Provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(6) Provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(7) Provide for the manufacture at an institution of motor vehicle license plates and other related articles;

(8) In case of emergency, and with the approval of the department, sell agricultural products and livestock on the open market. Receipts from these sales shall be deposited in the general fund.

(9) Provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions;

(10) Pay an inmate of the state prison an amount not exceeding fifty cents (\$.50) per day as an incentive for the performance of work, based on the following criteria:

- (a) Knowledge and skill
- (b) Attitude toward authority
- (c) Physical effort
- (d) Responsibility for equipment and materials
- (e) Regard for safety of others.

All these wages shall be paid from receipts from the sale of goods produced or manufactured at the institution where the resident resides.

History: En. Sec. 10, Ch. 199, L. 1965; amd. Sec. 51, Ch. 120, L. 1974.

for "and other articles needed by the registrar of motor vehicles"; substituted "department" for "board" in subdivision (8); and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "and other related articles" in subdivision (7)

CHAPTER 16—PAYMENTS FOR THE CARE OF RESIDENTS OF INSTITUTIONS

Section

80-1601. Institutions subject to per diem charge.

80-1602. Definition of terms.

80-1603. Monthly assessment of charges—annual computation of rate—investigation—claim of state—review—deposit of receipts.

80-1605. Parental liability for costs incurred by resident of institutions.

80-1606. Relief from excess charges.

80-1601. Institutions subject to per diem charge. The department of institutions shall collect and process per diem payments for the care of residents in the following institutions and for the care of those persons in foster homes or group homes under provisions of the department:

- (1) Montana children's center
- (2) Warm Springs state hospital
- (3) Boulder river school and hospital
- (4) Galen state hospital
- (5) Montana veterans' home
- (6) Montana center for the aged
- (7) Eastmont training center.

History: En. Sec. 13, Ch. 199, L. 1965; amd. Sec. 4, Ch. 320, L. 1967; amd. Sec. 1, Ch. 276, L. 1969; amd. Sec. 1, Ch. 191, L. 1971; amd. Sec. 52, Ch. 120, L. 1974.

Amendments

The 1967 amendment, in subparagraph (2), substituted "Warm Springs state hospital" for "State Hospital"; in subparagraph (3), substituted "Boulder river school and hospital" for "State Training School and Hospital"; and, in subparagraph (4), substituted "Galen state hospital" for "State Pulmonary Disease Hospital."

The 1969 amendment added subparagraph (7).

The 1971 amendment inserted "and for the care of those persons in foster homes or group homes under the jurisdiction of

the aftercare division of the department of institutions" at the end of the preliminary paragraph.

The 1974 amendment substituted "under the provisions of the department" at the end of the preliminary paragraph for "under the jurisdiction of the aftercare division of the department of institutions"; and made minor changes in phraseology.

Effective Dates

Section 2 of Ch. 276, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 10, 1969.

Section 2 of Ch. 191, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

80-1602. Definition of terms. As used in this chapter, unless the context requires otherwise:

(1) "Ancillary charge" means identifiable, direct, patient service expenses including, but not limited to, operating room, anesthesia, X-ray, laboratory, blood bank, oxygen therapy, physical therapy, medical supply, drug, and specialized medical equipment, expenses.

(2) "Full-time equivalent resident load" means the total daily resident count for the fiscal year divided by the number of days in the year.

(3) "Per diem" means the gross daily cost of operating an institution, excluding the cost of educational programs and ancillary charges, divided by the full-time equivalent resident load. The per diem may be computed separately for distinctively different programs at multipurpose institutions.

(4) "Resident" means any person who is receiving care from, or who is a resident of, an institution listed in section 80-1601.

(5) "Responsible person" means a person responsible for the support and maintenance of a resident.

History: En. Sec. 14, Ch. 199, L. 1965; amd. Sec. 1, Ch. 336, L. 1974.

Amendments

The 1974 amendment inserted subdivision (1) and renumbered the remaining

subdivisions; deleted "capital outlay for physical plant and" in the first sentence of subdivision (3) after "excluding"; inserted "and ancillary charges" in the first sentence of subdivision (3); and made a minor change in phraseology.

80-1603. Monthly assessment of charges—annual computation of rate—investigation—claim of state—review—deposit of receipts. (1) The department shall assess monthly against each resident or responsible person, the full per diem charge, a proportionate share of the per diem charge, or no per diem charge, plus full ancillary charge, a proportionate share of the ancillary charge, or no ancillary charge, based upon financial information given to the department during its investigation. The per diem shall be computed on July 1 of each year by the department.

(2) An assessment made by the department under this section shall be based on the resident's or responsible person's ability to pay. The department shall not make an assessment which would place an undue financial burden on the resident or the responsible person.

(3) For the purpose of these investigations, every agency of the state is required to render all reasonable assistance to the department in obtaining all information necessary for the proper implementation of the purposes of this investigation. A representative of the department, duly authorized by the director, may administer oaths, take testimony, subpoena and compel the attendance of witnesses and the production of books, papers, records, and documents in connection with the duty of securing payments for support as provided by this act. A person who fails to obey the subpoena, upon petition of the department, to any judge of the district court of the state, may be ordered by the judge to appear and show cause for his disobedience of the subpoena. The judge, after the hearing, may order that the subpoena be obeyed, or if it is made to appear to the judge that the subpoena was for any reason inappropriately issued, may dismiss the petition. A person who fails to obey the subpoena when ordered to do so by the judge may be punished for contempt of court on application of the district court by the department.

(4) The state has a claim against the estate of a patient and against the estate of a responsible person, for an amount due to the state at the date of death of the resident or the responsible person. The claim against the estate of a responsible person does not have priority against the estate for the amount necessary to rear and educate surviving children of the responsible person.

(5) The attorney general shall collect any claim which the state may have against such estate. This claim may not be enforced against any real estate while it is occupied as a home by the surviving spouse or the resident or responsible person.

(6) If a resident or responsible person disagrees with the determination of the department as to the ability of the resident or responsible person to pay any part of the per diem or ancillary charge, an appeal may be filed within thirty (30) days of the determination with the board of institutions. If the resident disagrees with the determination of the appeal by the board of institutions, an appeal may be filed in any court of record in Montana having jurisdiction of the resident or responsible person liable for the payment.

(7) The department may, at any time, review and change a determination for per diem or ancillary charge payments. In any case, however, a resi-

dent of an institution may not be released by reason of the nonpayment of the per diem or the ancillary charge, if in the judgment of the superintendent of the institution at which he is a resident, this release is medically inadvisable.

(8) A per diem payment received by the department shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 120 and once by Ch. 336. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment rewrote subsection (1), for previous text of which see parent volume; inserted subsections (2) to (4); redesignated and rewrote former subsection (2) as subsection (5); redesignated former subsection (3) as subsection (6) and deleted "and may, if necessary, request a further investigation by a county department of public welfare" at the end of the first sentence; and redesignated former subsection (4) as subsection (7).

Chapter 120, Laws of 1974, substituted "department" for "director of institutions" in subsection (1); substituted "department" for "department of institutions" in the first sentence of subsection (2); substituted "department" for "director or representative of the department" in the third and fifth sentences of subsection (2); substituted "A representative" for "The director and any representative" in the second sentence of subsection (2); deleted "deemed material appurtenant" after "documents" in the second sentence of subsection (2); and made minor changes in phraseology and punctuation.

Chapter 336, Laws of 1974, inserted "plus full ancillary charge, a proportionate share of the ancillary charge, or no ancillary charge" in the first sentence of subsection (1); inserted subsection (2); inserted the references to ancillary charge in subsections (6) and (7); and made minor changes in phraseology.

80-1605. Parental liability for costs incurred by resident of institutions.

(1) The natural or adoptive parents of persons who are long term residents at facilities owned or operated by the department of institutions shall only be liable on the charges made by such facility for treatment, care and maintenance for an amount not to exceed the cost of caring for a normal child at home as determined from standard sources by the department.

(2) Parents or adoptive parents of a long term resident in a facility owned or operated by the department shall not be liable for any charges made by such facility for treatment, care and maintenance of such a resident incurred or accrued subsequent to such resident attaining age eighteen (18).

(3) For purposes of this section the term "long term resident" is defined as a person who has been a resident in a facility owned or operated by the department for a continuous period in excess of one hundred twenty (120) days. No absence of a resident from the facility due to a temporary or trial visit shall be counted as interrupting the accrual of the one hundred twenty (120) days herein required to attain the status of a long term resident.

History: En. 80-1605 by Sec. 1, Ch. 324, L. 1974.

Title of Act

An act providing that parents of long-term residents at institutions administered

by the department of institutions are determined from standard sources by the liable only to the extent of the cost of department of institutions. caring for a normal child at home as

80-1606. Relief from excess charges. This act is intended to relieve and shall be construed to relieve any parent of any liability for charges in excess of the limit set in section 1 [80-1605] of this act for treatment, care and maintenance of a natural or adoptive child at facilities owned or operated by the department of institutions.

History: En. 80-1606 by Sec. 2, Ch. 324, L. 1974.

CHAPTER 17—GALEN STATE HOSPITAL

- Section
 80-1701. Location and primary function of hospital—secondary function.
 80-1702. Qualifications of superintendent.
 80-1703. Transfer of patient to mental institution—notice to relatives.
 80-1704. Juvenile reception and evaluation center—committal—duties—transportation to and from.
 80-1705. Alcoholism services center.

80-1701. Location and primary function of hospital—secondary function. (1) The institution located at Galen is the Galen state hospital and, as its primary function, provides:

(a) Treatment of tuberculosis and silicosis (commonly called miner's consumption).

(b) Detoxification, diagnosis, treatment and referral for those persons who seek relief from the illness of alcoholism.

(2) If there are space and funds available, the hospital shall also treat the following:

(a) Emphysema, bronchiectasis, carcinoma of the lung and other diseases of the lung pertaining to pulmonary disorders.

(b) Geriatric and senile patients afflicted with pulmonary disorders and patients who are residents of another state institution.

History: En. Sec. 17, Ch. 199, L. 1965; amd. Sec. 5, Ch. 320, L. 1967; amd. Sec. 1, Ch. 90, L. 1974.

Amendments

The 1967 amendment substituted "Galen state hospital" for "State Pulmonary Disease Hospital" in subsection (1).

The 1974 amendment inserted subdivision (1)(b).

80-1702. Qualifications of superintendent. The superintendent of Galen state hospital shall be a physician legally qualified to practice medicine in Montana with at least (4) years in the practice of his profession, including at least one (1) year's experience in a general hospital.

History: En. Sec. 18, Ch. 199, L. 1965; amd. Sec. 6, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Galen state hospital" for "state pulmonary disease hospital."

80-1703. Transfer of patient to mental institution—notice to relatives. A mentally retarded or mentally ill person residing at Galen state hospital

may be transferred to the Warm Springs state hospital, the Montana center for the aged, or the Boulder river school and hospital with the approval of the department of institutions if the department determines that the transfer will be in the best interests of the patient. Unless a medical or psychiatric emergency exists fifteen (15) days prior to the transfer the department shall send notice of the proposed transfer to the patient's parent, guardian, or spouse, or if none is known, his nearest relative or friend. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 19, Ch. 199, L. 1965; amd. Sec. 7, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Galen state hospital" for "state pulmonary dis-

ease hospital"; substituted "Warm Springs state hospital" for "state hospital"; substituted "Boulder river school and hospital" for "state training school and hospital"; and made a minor change in punctuation.

80-1704. Juvenile reception and evaluation center—committal—duties—transportation to and from. The reception and evaluation center for children at the Galen state hospital as established by law shall be subject to the rules and regulations adopted and promulgated by the state department of institutions and shall accept from the juvenile courts the temporary custody of children then being held on a charge, under which the child could be adjudged a delinquent. For the period during which children are in the custody of the reception and evaluation center for children, it shall provide for them a residential program of care and study. The reception and evaluation center for children may not in any event detain or hold a child in custody for a period of time greater than forty-five (45) days. To assist the juvenile courts in making a decision regarding the child's disposition the reception and evaluation center for children will forward recommendations to the court to include, but not limited to, a psychiatric social summary; psychological evaluation, medical report; diagnostic school report; and a psychiatric report prepared by a consulting psychiatrist, for those for whom this kind of evaluation is considered necessary. Transportation to and from the reception and evaluation center shall be provided by the county of such child's residence.

History: En. Sec. 20, Ch. 320, L. 1967.

Repealing Clause

Section 21 of Ch. 320, Laws 1967 read "Sections 80-2201 and 80-2208, R. C. M. 1947, are hereby repealed."

80-1705. Alcoholism services center. (1) There is an alcoholism services center located at the Galen state hospital. The admittance and discharge procedures for alcoholics are the same as for ill persons.

(2) As used in this section:

(a) "Alcoholism" means a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to an extent which endangers the drinker's health, interpersonal relations or economic functioning, or to an extent which endangers the public health, welfare or safety.

(b) An "alcoholic" is a person suffering from the illness of alcoholism.

(3) The alcoholism services center shall:

(a) Provide care, evaluation, treatment, referral, and rehabilitation to persons in Montana who are referred for the arrestment of the illness of alcoholism or the complications thereof;

(b) Consult with, inform, guide and co-operate with Montana communities and citizens' committees in establishing local alcoholism treatment, rehabilitation, referral, public information, and educational services;

(c) Accumulate and disseminate scientific information on alcoholism to all agencies, groups and individuals, public or private, who require or seek such services;

(d) Initiate, encourage and co-ordinate practical research on alcoholism in Montana aimed at improving treatment, rehabilitation, referral and prevention techniques or services;

(e) Initiate and co-ordinate with the schools and institutions of higher learning in Montana courses of study and clinical experience in the evaluation, care, treatment, referral, rehabilitation and aftercare of alcoholics for both professional and lay persons requiring such information and experience; and

(f) Enter into co-operative agreement with other state, local or federal agencies to further the work of the center and community programs.

History: En. Sec. 70, Ch. 199, L. 1965; amd. Sec. 33, Ch. 320, L. 1967; Sec. 80-2404, R. C. M. 1947; amd. and redes. 80-1705 by Sec. 2, Ch. 90, L. 1974.

Amendments

The 1967 amendment substituted "Warm Springs state hospital" for "state hospital" at the end of the first sentence of subsection (1).

The 1974 amendment renumbered this section; substituted "located at the Galen" for "at the Warm Springs" near the beginning of subdivision (1); deleted "mentally" before "ill persons" at the end of subdivision (1); deleted "custody" as the second word in subdivision (3)(a); substituted "evaluation" for "diagnosis" near the beginning of subdivision (3)(a); inserted "referral" after "treatment" near the beginning of subdivision (3)(a); substituted "are referred for the arrestment of" near the end of the same subdivision for "seek, or are required to seek, relief from"; deleted "who seek assistance"

after "committees" from subdivision (3)(b); inserted "referral" and "and educational" in subdivision (3)(b); inserted "referral" near the end of subdivision (3)(d); inserted the present subdivision (3)(e), redesignating the former subdivision (3)(e) as subdivision (3)(f); inserted in the present subdivision (3)(f) "local or federal" before "agencies"; added "and community programs" at the end of the present subdivision (3)(f); and made minor changes in punctuation and phraseology.

Repealing Clause

Section 34 of Ch. 320, Laws 1967 read "Section 80-2201, R. C. M. 1947, and section 80-2208, R. C. M. 1947, are hereby repealed."

Effective Date

Section 35 of Ch. 320, Laws 1967 read "The institutional name changes specified in this act shall be effective January 1, 1968."

CHAPTER 19—STATE PRISON

- Section**
80-1903. Working hours of prison employees.
80-1905. Good time allowance—forfeiture—probationers and parolees—application of prior law—good time allowance offenders.
80-1908. Commitment of inmates to state hospital.
80-1909. Establishment of intensive rehabilitation center authorized.
80-1910. Standards of admission.
80-1911. Management and control of center.
80-1912. Expense of trial for escape.

80-1903. Working hours of prison employees. A period of eight (8) hours in each period of twenty-four (24) consecutive hours constitutes a

day's work for all employees of the state prison. The staff of correctional personnel shall not work more than forty (40) hours or five (5) days a week except in cases of riots, escapes or other emergencies endangering health, life, or property.

History: En. Sec. 26, Ch. 199, L. 1965;
amd. Sec. 1, Ch. 232, L. 1969.

Amendments

The 1969 amendment substituted "forty (40)" for "forty-eight" before "hours" and "five (5)" for "six" before "days" in the second sentence.

80-1905. Good time allowance—forfeiture—probationers and parolees—application of prior law—good time allowance offenders. (1) The state department of institutions shall adopt rules and regulations providing for the granting of good time allowance for inmates employed in any prison work or activity. The good time allowance shall operate as a credit on his sentence as imposed by the court, conditioned upon the inmate's good behavior and compliance with the rules and regulations made by the department or the warden. Except as provided in subsection (4), the rules adopted by the department may not grant good time allowance to exceed:

(a) to (c) * * * [Same as parent volume.]

(d) thirteen (13) days per month for those inmates enrolled in school inside the walls who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole.

(e) ten (10) days for each pint of blood donated by an inmate.

(2) * * * [Same as parent volume.]

(3) The provisions of subsections (1) and (2) apply to all persons who are on probation or parole or eligible to be placed on probation or parole. No person convicted and sentenced before April 1, 1955, shall have his good time allowance reduced as a result of this section.

(4) The maximum allowances for good time described in subsection (1) shall be reduced for a person who has been convicted of a felony offense on more than two (2) occasions within a ten (10) year period; provided, however, for the purpose of determining such ten (10) year period, the time during which a person is incarcerated shall not be counted. The maximum amount of good time allowable for such a habitual offender shall be computed as follows:

(a) five (5) days per month for inmates assigned within the confines of the walls of the prison;

(b) eight (8) days per month for those inmates placed outside the confines of the walls of the prison;

(c) ten (10) days per month for those inmates who have been assigned outside the walls of the prison for an uninterrupted period of one (1) year on a minimum status;

(d) eight (8) days per month for those inmates enrolled in school inside the walls who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole;

(e) five (5) days for each pint of blood donated by an inmate.

(5) No person convicted and sentenced before July 1, 1974, shall have his good time allowance reduced as required by subsection (4).

History: En. Sec. 28, Ch. 199, L. 1965; amd. Sec. 1, Ch. 219, L. 1967; amd. Sec. 1, Ch. 113, L. 1974.

Amendments

The 1967 amendment added subdivisions (d) and (e) in subsection (1).

The 1974 amendment inserted "Except as provided in subsection (4)" in the third sentence of subsection (1); substituted "The provisions of subsections

(1) and (2) apply" in subsection (3) for "This section applies"; and added subsections (4) and (5).

Discretion of Parole Board

Where petitioner violated his parole, it was completely within discretion of parole board to withdraw his "good time" as provided in this section. Petition of Spurlock, 153 M 475, 458 P 2d 80.

DECISIONS UNDER FORMER LAW

Forfeiture of Good Time Allowance

A prisoner who, by virtue of former section 80-740.1, was earning good time under former section 80-739, the prior law, was subject to the provisions of former section 80-741, the forfeiture statute, which existed under the old law. Petition of Brandt, 147 M 175, 410 P 2d 708.

Contention by petitioner for writ of

habeas corpus that board of pardons did not have authority to revoke earned good time after violation of parole by petitioner under this section was without merit since petitioner was sentenced prior to 1955 and section 80-741, in effect at that time, allowed such revocation of earned good time. Petition of McIlhargey, 154 M 510, 463 P 2d 476.

80-1903. Commitment of inmates to state hospital. The procedures for committing an inmate of the state prison to the state hospital are the same as for any other person. Provided, however, that nothing in this act shall be deemed to prevent the temporary transfer of an inmate of the state prison to the Warm Springs state hospital for treatment or evaluation. Such transfers may only be authorized by the department of institutions upon recommendation of the warden of the state prison and the superintendent of the Warm Springs state hospital and shall be for a period not to exceed sixty days and shall not exceed a total of one hundred twenty days in any twelve-month period.

History: En. Sec. 31, Ch. 199, L. 1965; amd. Sec. 1, Ch. 294, L. 1969.

Amendments

The 1969 amendment added the last two sentences.

Effective Date

Section 2 of Ch. 294, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 11, 1969.

80-1909. Establishment of intensive rehabilitation center authorized. Within the budgetary limits provided by law, the department of institutions may establish on property owned by the state, on which prison facilities are or may be located, a prison facility designed to segregate certain types of prisoners.

History: En. Sec. 1, Ch. 221, L. 1969; amd. Sec. 54, Ch. 120, L. 1974.

Title of Act

An act providing for the establishment of an intensive rehabilitation center at the Montana state prison; providing standards of admission to such center; providing

for the management and control of such center.

Amendments

The 1974 amendment substituted "department of institutions" for "board of institutions"; and made minor changes in phraseology and punctuation.

80-1910. Standards of admission. The facility shall be designated and known as the "intensive rehabilitation center" and shall be the place of custody for those male prisoners who in consideration of their age, type of crime for which committed, physical condition, behavior, attitude and pros-

pects of reformation, are those most likely to benefit from such place of custody.

History: En. Sec. 2, Ch. 221, L. 1969.

80-1911. Management and control of center. The warden of the Montana state prison, subject to the supervision and control of the department of institutions shall operate and manage such intensive rehabilitation center, and shall make such rules and regulations for the operation, management, and admission to such center as may from time to time be necessary and desirable.

History: En. Sec. 3, Ch. 221, L. 1969.

80-1912. (10872) Expense of trial for escape. Whenever a trial takes place of any person under any of the provisions of section 94-7-306, and whenever a prisoner in the state prison shall be tried for any crime committed therein, the county clerk of the county where such trial is had shall make out a statement of all the costs incurred by the county for the trial of such case, and of guarding and keeping such prisoner, properly certified by a district judge of said county, which statement shall be sent to the board of state prison commissioners for their approval; and after such approval, said board must cause the amount of such costs to be paid out of the money appropriated for the support of the state prison to the county treasurer of the county where such trial was had.

History: En. Sec. 226, Pen. C. 1895; re-en. Sec. 8228, Rev. C. 1907; re-en. Sec. 10872, R. C. M. 1921; Sec. 94-4209, R. C. M. 1947; redes. 80-1912 and amd. by Sec. 27, Ch. 513, L. 1973. Cal. Pen. C. Sec. 111.

Amendments

The 1973 amendment renumbered this section; and substituted the reference to section 94-7-306 for a reference to sections 94-4203 and 94-4204 near the beginning of the section.

Compiler's Notes

The previous text of this section may be found under sec. 94-4209 in bound Volume Eight.

CHAPTER 20—STATE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION

80-2001. Bureau under prison warden—appointment of supervisor.

Cross-References

Bureau abolished and functions transferred, sec. 82A-1202(1).

CHAPTER 21—MONTANA CHILDREN'S CENTER

Section

- 80-2105. Commitment of resident to Mountain View school or Pine Hills school.
80-2106. Transfer of child to mental institution—notice to parents or guardian.

80-2101. Location and function of center.

Cross-References

High school tuition payments, sec. 75-6319.

80-2105. Commitment of resident to Mountain View school or Pine Hills school. When a child who resides at the Montana children's center becomes incorrigible, or when his conduct endangers the welfare of the other residents of the home or any other person, the superintendent, with the consent of the department, shall petition the district court for commitment of the child to the Mountain View school or the Pine Hills school.

History: En. Sec. 42, Ch. 199, L. 1965; amd. Sec. 55, Ch. 120, L. 1974.

stituted "department" for "department of institutions"; substituted "Mountain View school or the Pine Hills school" for "state vocational school for girls or the state industrial school"; and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment inserted "Montana" before "children's center"; sub-

80-2106. Transfer of child to mental institution—notice to parents or guardian. (1) The superintendent of the Montana children's center may, with the approval of the department, transfer a child to Warm Springs state hospital or Boulder river school and hospital. The transfer order must be certified by a licensed physician that he has personally examined the child and is of the opinion that he is mentally ill or mentally retarded, as the case may be.

(2) Unless a medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the department shall send notice of the proposed transfer to the parents or legal guardian of the child, and to the district court which committed the child. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 43, Ch. 199, L. 1965; amd. Sec. 56, Ch. 120, L. 1974.

school and hospital" in subsection (1) for "the state hospital or state training school and hospital"; substituted "department" for "director of institutions" and "director" in subsection (2); and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "Warm Springs state hospital or Boulder river

CHAPTER 22—JUVENILE FACILITIES

Section

80-2202. Superintendents to manage facilities.

80-2203. Curricula at facilities.

80-2204. Maximum age of commitment.

80-2205. Medical examination before commitment—records required to accompany child committed.

80-2206. Commitment expenses—arrangement for transportation.

80-2209. Transfer of child to any other facility or institution—notice to parents or guardian and committing court.

80-2210. Commutation of sentence to state prison—commitment of child to department of institutions—revocation of commutation—transfer of child to a juvenile facility.

80-2211. Child leaving juvenile facility without permission—apprehension and return.

80-2212. Aiding resident in leaving school—penalty.

80-2213. University aid to residents of schools.

80-2201. Repealed.

Repeal

This section (Sec. 45, Ch. 199, L. 1965), relating to the location and functions of

vocational and industrial schools, was repealed by Sec. 21, Ch. 320, Laws 1967 and Sec. 34, Ch. 320, Laws 1967.

80-2202. Superintendents to manage facilities. Each facility provided for herein shall be under the immediate management and control of a superintendent.

History: En. Sec. 46, Ch. 199, L. 1965; amd. Sec. 11, Ch. 320, L. 1967.

facility provided for herein" for "The state vocational school for girls and the state industrial school"; and made a minor change in phraseology.

Amendments

The 1967 amendment substituted "Each

80-2203. Curricula at facilities. The academic and vocational curriculum in facilities containing academic and vocational training shall include such academic and vocational subjects as are taught in the public schools of the state, and shall conform to the standards set by the state board of education.

History: En. Sec. 47, Ch. 199, L. 1965; amd. Sec. 12, Ch. 320, L. 1967.

academic and vocational curriculum in facilities containing academic and vocational training" for "The curricula of the state vocational school for girls and the state industrial school."

Amendments

The 1967 amendment substituted "The

80-2204. Maximum age of commitment. No child shall be committed by any juvenile court to the Mountain View school, Pine Hills school or other juvenile facility who has attained the age of eighteen (18) years, except, however, that any person under twenty-one (21) years who prior to attaining the age of eighteen (18) years came under the jurisdiction of the juvenile court by reason of delinquent conduct and whose adjudication of delinquency, including the finding that commitment to some institution was necessary is not made until after the child reaches the age of eighteen (18) years shall be committed to the department of institutions who shall then have the obligation to test and evaluate the person to determine the proper place of detention for the person who shall thereupon be confined at that institution until the person shall have attained the age of twenty-one (21) years unless sooner discharged by the department of institutions.

History: En. Sec. 48, Ch. 199, L. 1965; amd. Sec. 13, Ch. 320, L. 1967; amd. Sec. 15, Ch. 262, L. 1969.

be committed to the Mountain View school, Pine Hills school or the department of institutions who has attained the age of eighteen (18)."

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

The 1969 amendment rewrote this section which formerly read, "No child shall

Repealing Clause

Section 16 of Ch. 262, Laws 1969 read "Sections 10-604, 10-605, 10-609, 10-618, 10-619, 10-620, 10-632, 75-3001, and 75-3002, R. C. M. 1947, are repealed."

80-2205. Medical examination before commitment—records required to accompany child committed. Before a child is committed to the Mountain View school or the Pine Hills school or the department of institutions he shall be examined by a licensed physician. A child committed to one of the schools or the department of institutions shall be accompanied by the order of commitment, a medical examination report, an adequate social history, and any school records.

History: En. Sec. 49, Ch. 199, L. 1965;
amd. Sec. 14, Ch. 320, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

80-2206. Commitment expenses—arrangement for transportation. The expenses of committing a child to the Mountain View school or the Pine Hills school or to the department of institutions and transporting such child to the Mountain View school or the Pine Hills school or the place designated by the department for it to receive custody and the expense of returning such child to the county of residence shall be borne by the county of residence. The district judge shall arrange for transportation of the child to the place where the department of institutions has directed that it will receive custody of such child.

History: En. Sec. 50, Ch. 199, L. 1965;
amd. Sec. 15, Ch. 320, L. 1967.

Amendments

The 1967 amendment completely rewrote this section. For previous text, see parent volume.

80-2207. Repealed.

Repeal

Section 80-2207 (Sec. 51, Ch. 199, L. 1965), relating to county and federal payments for residents at the industrial

school and the construction of a physical education building, was repealed by Sec. 96, Ch. 120, Laws of 1974.

80-2208. Repealed.

Repeal

This section (Sec. 52, Ch. 199, L. 1965), relating to the placement or discharge of residents of vocational and industrial

schools, was repealed by Sec. 21, Ch. 320, Laws 1967 and Sec. 34, Ch. 320, Laws 1967.

80-2209. Transfer of child to any other facility or institution—notice to parents or guardian and committing court. (1) The department of institutions upon recommendation of the superintendent of a facility may transfer a child resident in one of its juvenile facilities to any other facility or institution under the jurisdiction and control of the department.

(2) In the case of transfers of children in juvenile facilities to Warm Springs state hospital or Boulder river school and hospital and unless medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the department of institutions shall send notice of the proposed transfer to the parents or legal guardian of the child and to the district court who committed the child. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 53, Ch. 199, L. 1965;
amd. Sec. 16, Ch. 320, L. 1967.

Amendments

The 1967 amendment completely rewrote this section. For previous text, see parent volume.

80-2210. Commutation of sentence to state prison—commitment of child to department of institutions—revocation of commutation—transfer of child to a juvenile facility. (1) Upon the application of a person under the

age of twenty-one (21) years who has been sentenced to the state prison, or upon the application of his parents or guardians, the governor may, after consulting with the department of institutions and with the approval of the board of pardons, commute the sentence by committing such person to the department of institutions during his minority or until sooner placed or discharged.

(2) If such person's behavior after being committed to the department of institutions indicates that he is not a proper person to reside at one of the department's juvenile facilities, the governor after consulting with the department of institutions with the approval of the board of pardons, may revoke the commutation and return him to the state prison to serve out his unexpired term, and the time spent by him at one of the department juvenile facilities or while a refugee from one of the department juvenile facilities, shall not be considered as a part of his original sentence.

Upon recommendation of the warden and with the approval of the department of institutions a person under the age of twenty-one (21) years, who has been sentenced to the state prison, may be transferred to any juvenile facility under the jurisdiction and control of the department. Provided, further, however, that upon recommendation of the warden and approval of a person sentenced to the state prison, or application of a person sentenced to the state prison and approval of the warden, and with the approval of the department of institutions such person sentenced to the state prison who is twenty-five (25) years old or younger may be transferred to the Swan River youth forest camp. Upon such transfer such person shall be under the supervision and control of the facility to which he is transferred.

If such person's behavior after transfer to such juvenile facility indicated he might be released on parole or his sentence commuted and he be discharged from custody, the superintendent of such facility, with the approval of the department, may make an appropriate recommendation to the state board of pardons and the governor who may, in their discretion, parole such person or commute his sentence.

If such person's behavior after transfer to a juvenile facility indicates he is not a proper person to reside in such facility, upon recommendation of the superintendent, and with the approval of the department, such person shall be returned to the state prison to serve out his unexpired term.

History: En. Sec. 54, Ch. 199, L. 1965; amd. Sec. 17, Ch. 320, L. 1967; amd. Sec. 1, Ch. 367, L. 1971.

Amendments

The 1967 amendment, in subsection (1), substituted "twenty-one (21)" for "eighteen (18)"; substituted "department of institutions" for "state vocational school for girls or state industrial school" before "during his minority"; in subsection (2), substituted "committed to the department of institutions" for "sent to one of such

schools" before "indicates"; substituted "one of the department's juvenile facilities" for "one of the schools" after "reside at"; substituted "department juvenile facilities or while a refugee from one of the department juvenile facilities" for "schools, or while a refugee from one of the schools" before "shall not be considered"; and added the second, third and fourth paragraphs in subsection (2).

The 1971 amendment substituted "person" for "child" throughout the section; and inserted in the second paragraph of

subsection (2) the proviso for the transfer of prisoners of the age of twenty-five or younger to the Swan River youth forest camp.

Effective Date

Section 2 of Ch. 367, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

80-2211. Child leaving juvenile facility without permission—apprehension and return. A child who has left a juvenile facility of the department without permission may be apprehended and returned by any citizen. The term "juvenile facility of the department" means any facility under the supervision and control of the Montana state department of institutions, whose primary function is the care, training, custody and control of children and specifically includes the Pine Hills school for boys, the Mountain View school for girls, the Montana children's center, Boulder river school and hospital, the Swan river youth forest camp and Eastmont training center.

History: En. Sec. 55, Ch. 199, L. 1965; amd. Sec. 18, Ch. 320, L. 1967; amd. Sec. 1, Ch. 313, L. 1973.

juvenile facility of the department" for "the state vocational school for girls or state industrial school."

Amendments

The 1967 amendment substituted "a

The 1973 amendment added the second sentence.

80-2212. Aiding resident in leaving school—penalty. A person who permits or assists a resident of any juvenile facility to leave a facility without permission, or who furnished or attempts to furnish to such a resident a tool, weapon, or other article with the intent of aiding him to leave without permission, or who harbors or conceals a resident who has left without permission, shall on conviction be punished by imprisonment for a term of not less than six (6) months or more than two (2) years, or by a fine not exceeding one thousand dollars (\$1,000), or by both such fine and imprisonment.

History: En. Sec. 56, Ch. 199, L. 1965; amd. Sec. 19, Ch. 320, L. 1967.

juvenile facility to leave a facility" for "the state vocational school for girls or the state industrial school to leave the school" after "a resident of."

Amendments

The 1967 amendment substituted "any

80-2213. University aid to residents of schools. The department may, on the recommendation of the superintendent, authorize a resident of the Mountain View school or Pine Hills school who has completed high school, and who is otherwise eligible, to receive up to eight hundred dollars (\$800) per year toward his expenses incurred in attending a unit of the university of Montana. The money may be used for transportation, clothing, books, board and room, and shall be paid in the same manner as other expenses of the school. The university of Montana shall not charge any fees or tuition for these residents. No more than eight (8) residents of each school may receive these benefits each year. The department shall notify the board of regents before August 1 of each year of the residents it has designated to receive the benefits for the forthcoming school year.

History: En. Sec. 57, Ch. 199, L. 1965; amd. Sec. 57, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted "department" for "department of institu-

tions" in two places; substituted "Mountain View school or Pine Hills school" for "state vocational school for girls or state industrial school"; and made minor changes in phraseology and punctuation.

CHAPTER 23—BOULDER RIVER SCHOOL AND HOSPITAL

Section

- 80-2303. Residence required for admittance to school.
- 80-2304. Application of parent or guardian for admission of mentally retarded person—supporting affidavits—social summary.
- 80-2305. Applications heard by district court—hearing—medical and psychological examination—social summary—order approving application.
- 80-2306. Admission to school to await accommodations—records to accompany person admitted—transportation costs.
- 80-2307. Temporary admissions to school.
- 80-2308. Transfer of patient to hospital—notice to parents or guardian and committing court.
- 80-2309. Discharge from school.
- 80-2310. Mental retardation center at Glendive—services provided.
- 80-2312. Supervision of Glendive center—transfers to Boulder river school and hospital.

80-2301, 80-2302. Repealed.

Repeal

Sections 80-2301 and 80-2302 (Secs. 58, 59, Ch. 199, L. 1965; Secs. 22, 23, Ch. 320,

L. 1967), relating to management of the Boulder River school and hospital, were repealed by Sec. 7, Ch. 111, Laws 1971.

80-2303. Residence required for admittance to school. To be eligible for admittance to the Boulder river school and hospital, a mentally retarded person or his parent or guardian shall have been a resident of the state for at least one (1) year.

History: En. Sec. 60, Ch. 199, L. 1965; amd. Sec. 24, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital."

80-2304. Application of parent or guardian for admission of mentally retarded person—supporting affidavits—social summary. If an application for admission of a mentally retarded person to the Boulder river school and hospital is made by the guardian or parent it shall be filed with the department of institutions, in a form prescribed by the department and available at the county department of public welfare office. The application shall be supported by the affidavit of two (2) physicians or one (1) psychologist acceptable to the department of institutions and one (1) physician certifying that the person whose admission is sought is mentally retarded. The county department of public welfare, where the retarded person resides, shall prepare a social summary on the retarded person for the use of the Boulder river school and hospital.

History: En. Sec. 61, Ch. 199, L. 1965; amd. Sec. 25, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital" wherever it appears in this section.

80-2305. Applications heard by district court—hearing—medical and psychological examination—social summary—order approving application. If the application for admission is made by someone other than the parent

or legal guardian of a mentally retarded person, it shall be filed with the clerk of the district court. The application shall be in a form prescribed by the state department of institutions. The judge shall set the time and place for hearing the application, and the clerk shall notify the parents or guardians, and other interested persons. The court shall name two (2) physicians or one (1) psychologist acceptable to the department of institutions, and one (1) physician, to examine the person whose admission is sought. The county department of public welfare shall prepare a social summary of the person for the use of the court. If the court concludes from the examination and other information obtained at the hearing that the person whose admission is sought, is a proper person for admission to the Boulder river school and hospital, the court shall issue an order approving the application.

History: En. Sec. 62, Ch. 199, L. 1965;
amd. Sec. 26, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital" in the sixth sentence.

80-2306. Admission to school to await accommodations—records to accompany person admitted—transportation costs. A person may not be taken to the Boulder river school and hospital until the department of institutions has ascertained whether or not there is room at the school to accommodate the person. If there is not room, the application shall be filed with the department, which shall grant admission when room becomes available. When there is room the person shall be sent to the school with a copy of the court order, if any, the application, and the social summary prepared by the county department of public welfare. The costs of transportation to the school shall be paid by the county where the person resides.

History: En. Sec. 63, Ch. 199, L. 1965;
amd. Sec. 27, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital" in the first sentence.

80-2307. Temporary admissions to school. In order to utilize facilities more efficiently during the temporary or seasonal decreases in population, and in order to extend the benefits of training and treatment programs offered by the Boulder river school and hospital to mentally retarded persons whose extended commitment is not sought, the department of institutions may admit a mentally retarded person to the school for a period not exceeding sixty (60) days on the application of the person's parent or guardian.

History: En. Sec. 64, Ch. 199, L. 1965;
amd. Sec. 28, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital."

80-2308. Transfer of patient to hospital—notice to parents or guardian and committing court. With the approval of the department of public institutions, a patient of the Boulder river school and hospital may be

transferred to the Warm Springs state hospital or the Galen state hospital. Unless a medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the department shall send notice of the proposed transfer to the parents or legal guardian of the person, and to the district court, if any, which committed the person. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 65, Ch. 199, L. 1965; amd. Sec. 29, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state

training school and hospital" after "patient of the"; and substituted "Warm Springs state hospital or the Galen state hospital" for "state hospital of (or) the state pulmonary disease hospital" after "transferred to the" in the first sentence.

80-2309. Discharge from school. (1) With the approval of the department of institutions, the superintendent may discharge a person admitted to the Boulder river school and hospital.

(2). * * * [Same as parent volume.]

History: En. Sec. 66, Ch. 199, L. 1965; amd. Sec. 30, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital" at the end of subsection (1).

80-2310. Mental retardation center at Glendive—services provided. The mental retardation center at Glendive is the "Eastmont training center" for residential and outpatient care of mentally retarded persons residing in Montana. The center may admit mentally retarded persons not residing in Montana in those circumstances in which Montana has agreed to do so by agreement with any other state. The center shall provide services similar to those provided at Boulder river school and hospital. However, the center may not be a duplication of Boulder river school and hospital, but shall be an extension thereof.

History: En. Sec. 3, Ch. 255, L. 1967; amd. Sec. 1, Ch. 275, L. 1969; amd. Sec. 1, Ch. 101, L. 1973; amd. Sec. 58, Ch. 120, L. 1974.

Amendments

The 1969 amendment inserted "to be called 'Eastmont training center'" after "at Glendive" in the first sentence.

The 1973 amendment inserted the second sentence.

The 1974 amendment deleted a clause in the first sentence ordering the establishment of a mental retardation center at Glendive; substituted "Boulder river school and hospital" for "state training school and hospital at Boulder"; and made minor changes in phraseology and punctuation.

Cross-References

Board functions transferred to department, sec. 82A-803.

80-2311. Repealed.

Repeal

Section 80-2311 (Sec. 4, Ch. 255, L. 1967), limiting the capacity of the mental

retardation center at Glendive, was repealed by Sec. 96, Ch. 120, Laws of 1974.

80-2312. Supervision of Glendive center—transfers to Boulder river school and hospital. The department shall establish and direct the services to be provided at the center. The department shall provide for temporary

transfers from the Eastmont training center to the Boulder river school and hospital for special medical, psychological, surgical, and other services.

History: En. Sec. 5, Ch. 255, L. 1967; amd. Sec. 2, Ch. 275, L. 1969; amd. Sec. 59, Ch. 120, L. 1974.

Amendments

The 1969 amendment substituted "Eastmont training center to the Boulder river school and hospital" for "Glendive center to the state training school and hospital at Boulder"; and substituted "and" for "or" before "other services on a temporary basis" in the second sentence.

The 1974 amendment deleted from the first sentence references to planning and construction of the Glendive center; substituted "department" for "board of institutions" and "board"; and made minor changes in phraseology and punctuation.

Effective Date

Section 3 of Ch. 275, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 10, 1969.

CHAPTER 24—WARM SPRINGS STATE HOSPITAL AND MENTAL HEALTH CENTERS

Section

- 80-2401. Location and function of hospital.
- 80-2401.1. Definition of terms.
- 80-2402. Qualifications of superintendent.
- 80-2403. Functions of department.
- 80-2404. [Transferred.]
- 80-2405. Department to control public mental health programs—establishment of standards, qualifications and compensation—compliance with federal guidelines.
- 80-2406. Clinics and community services.
- 80-2407. Mental health regions.
- 80-2407.1. Fees retained by regional board.
- 80-2408. Continuation of services.
- 80-2409. Availability of services.
- 80-2410. Mental health centers established—staffing.
- 80-2411. Supervision of mental health centers.
- 80-2412. Interstate compact on mental health enacted—text.

80-2401. Location and function of hospital. The institution located at Warm Springs is the "Warm Springs state hospital." The functions of the state hospital are the care and treatment of mentally ill persons.

History: En. Sec. 67, Ch. 199, L. 1965; amd. Sec. 31, Ch. 320, L. 1967; amd. Sec. 3, Ch. 90, L. 1974; amd. Sec. 60, Ch. 120, L. 1974.

Amendments

The 1967 amendment substituted "Warm Springs state hospital" for "state hospital."

Chapter 90, Laws of 1974, deleted "and alcoholics" from the end of the second sentence; and made a minor change in punctuation.

Chapter 120, Laws of 1974, deleted "The Warm Springs state hospital is in the division of mental hygiene of the department of institutions" from the end of the section; and made minor changes in phraseology.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 90 and once by Ch. 120. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

80-2401.1. Definition of terms. Unless the context requires otherwise, in this act:

(1) "Public mental health facility" means any public service or group of services operated by the department of institutions offering mental health care on an inpatient or outpatient basis to the mentally ill.

(2) "Community comprehensive mental health center" means a facility, not necessarily encompassed within one building, offering at least the following five (5) basic mental health services to the public:

- (a) Twenty-four (24) hour inpatient care;
- (b) Part-time hospitalization;
- (c) Outpatient service;
- (d) Emergency service;
- (e) Consultation and education in mental health.

(3) "Mental health clinic" means an outpatient facility offering mental health care to the public.

History: En. Sec. 1, Ch. 246, L. 1967; amd. Sec. 61, Ch. 120, L. 1974.

Title of Act

An act expanding duties and services of the division of mental hygiene of the state board of public institutions by establishing and conducting mental health clinics and community comprehensive mental health centers; creating regional mental health boards; providing for the organization thereof; defining the duties of regional mental health boards; authorizing the participation of the division of mental hygiene of the state board of public institutions in contractual or co-operative arrangements with regional mental health boards and others; providing the division of mental hygiene and the regional mental health boards the authority to receive gifts, grants, donations, and any other form of support and

enabling counties participating in regional mental health programs to use tax moneys to finance the programs of prevention, diagnosis and treatment of mental illness; giving the division of mental hygiene of the state board of public institutions general supervisory power and control over all public mental health programs in the state of Montana; amending section 80-2403 of the Revised Codes of Montana, 1947, enacted as section 69, chapter 199, Laws of 1965; and repealing all other acts and parts of acts in conflict herewith.

Amendments

The 1974 amendment substituted "operated by the department of institutions" in subdivision (1) for "operating under the guidelines of the division of mental hygiene of the department of institutions"; and made minor changes in phraseology and punctuation.

80-2402. Qualifications of superintendent. The superintendent of the Warm Springs state hospital shall be a licensed physician who has fulfilled the residency requirements of the American Board of Psychiatry and Neurology in the specialty of psychiatry or a hospital administrator with a master's degree and a minimum of three (3) years' full-time experience in hospital administration. The qualifications of the superintendent serving on the effective date of this act shall be considered sufficient to meet the requirements of this section.

History: En. Sec. 68, Ch. 199, L. 1965; amd. Sec. 32, Ch. 320, L. 1967; amd. Sec. 62, Ch. 120, L. 1974; amd. Sec. 1, Ch. 338, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 120 and once by Ch. 338. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1967 amendment substituted "Warm Springs state hospital" for "state hospital" in the first sentence.

Chapter 120, Laws of 1974, deleted a first sentence making the superintendent of Warm Springs state hospital the supervisor of the division of mental hygiene; and made minor changes in phraseology.

Chapter 338, Laws of 1974, added to the second sentence "or a hospital administrator with a master's degree and a minimum of three (3) years' full-time experience in hospital administration"; and added the third sentence.

Effective Date

Section 2 of Ch. 338, Laws 1974 provided the act should be in effect from

and after its passage and approval. Approved March 28, 1974.

80-2403. Functions of department. The department shall:

(1) Take cognizance of matters affecting the mental health of the citizens of the state;

(2) Initiate preventive mental hygiene activities of the state's mental health program, including but not limited to, the implementation of mental health care and treatment, prevention, and research as can best be accomplished by community centered services. Such means shall be utilized to initiate and operate these services in co-operation with local agencies as established under sections 80-2406 and 80-2407.

(3) Make scientific and medical research investigations relative to the incidence, cause, prevention, and care of mental illness;

(4) Collect and disseminate information relating to mental hygiene;

(5) Prepare a comprehensive plan for the development of public mental health services in the state. The public mental health services shall include, but not be limited to, community comprehensive mental health centers, mental hygiene clinics, traveling service units, consultative and educational services.

(6) Provide by regulation for the examination of persons, who apply for examination or who are admitted either as inpatients or outpatients into Warm Springs state hospital or other public mental health facility under the supervision and control of the department, for the purpose of diagnosing and prescribing treatment of mental illness;

(7) Receive from agencies of the United States and other agencies, persons or groups of persons, associations, firms or corporations, grants of money, receipts from fees, gifts, supplies, materials, and contributions, for the development of mental health services within the state.

History: En. Sec. 69, Ch. 199, L. 1965; amd. Sec. 2, Ch. 246, L. 1967; amd. Sec. 63, Ch. 120, L. 1974.

Amendments

The 1967 amendment added "including but not limited to * * * below" after "mental health program" at the end of subparagraph (2); in subparagraph (3), inserted "research" after "medical"; substituted "a comprehensive plan" for "plans" after "Prepare" at the beginning of subparagraph (5); inserted "public" before "mental" in the first sentence and added the second sentence to subparagraph (5); rewrote subparagraph (6), which formerly read, "Examine persons received into the state hospital and other persons who apply for examination, for the purpose of diagnosing and prescribing treatment of mental illness"; deleted old subparagraph (7), which read, "Establish and conduct clinics in cities and towns of the state for the diagnosis and treatment of mental illness"; redesignated old

subparagraph (8) as new subparagraph (7); and in new subparagraph (7), inserted "government of the" before "United States" near the beginning of the subparagraph; inserted "persons or groups of persons, associations, firms or corporations" after "agencies"; inserted "receipts from fees, gifts, supplies, materials and contributions" after "grants of money"; substituted "health" for "hygiene" before "services"; and deleted "and use such moneys in its operation" at the end of the subparagraph.

The 1974 amendment substituted "department" for "division of mental hygiene of the department of institutions" in the first sentence of the section and for "division of mental hygiene" in subdivision (6); deleted "by the division of mental hygiene" after "shall be utilized" in subdivision (2); substituted "Warm Springs state hospital" for "state hospital" in subdivision (6); and made minor changes in phraseology and punctuation.

80-2404. [Transferred.]**Compiler's Notes**

Section 2, Ch. 90, Laws of 1974 re-numbered this section as sec. 80-1705.

80-2405. Department to control public mental health programs—establishment of standards, qualifications and compensation—compliance with federal guidelines. The department shall control the public mental health programs which receive any state assistance, by adopting rules and standards for providing mental health facilities and services. It shall set minimum standards for programs, and establish appropriate qualifications and compensation scales and personnel policies for persons employed in these programs. All public mental health facilities and services shall, subject to the approval of the department, comply with existing federal guidelines and with requirements which will enable them to qualify for available matching funds.

History: En. Sec. 3, Ch. 246, L. 1967; amd. Sec. 64, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted "department" for "department of institu-

tions, through the division of mental hygiene" in the first sentence and for "department of institutions" in the last sentence; and made minor changes in phraseology and punctuation.

80-2406. Clinics and community services. (1) The department may establish and conduct community comprehensive mental health centers, mental health clinics, and other facilities in cities, towns, and areas of the state for the purpose of aiding in the prevention, diagnosis, and treatment of mental illness. Such centers, clinics, or other facilities may be provided directly by state agencies or indirectly through contract or co-operative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons or hospitals, under rules adopted by the department.

(2) State funds specifically appropriated for regional mental health service programs shall not exceed fifty per cent (50%) of the total expenditures of the programs.

History: En. Sec. 4, Ch. 246, L. 1967; amd. Sec. 65, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "division of mental hygiene" twice in subsection (1); and made minor changes in phraseology and punctuation.

80-2407. Mental health regions. (1) Mental health regions shall be established in the state mental health plan and shall conform to the mental health regions as established in the state mental health construction plan promulgated by the board of health and environmental sciences under sections 82-3314 to 82-3318, and the federal Community Mental Health Centers Act.

(2) Upon the establishment of the mental health regions, the county commissioners in each of the various counties in a region shall designate a person from their respective county to serve as a representative of the

county on a regional mental health board. The board shall be established under guidelines adopted by the department. All appointments to the board shall be for terms of two (2) years.

(3) The duties of an organized regional mental health board include:

(a) Annual review and evaluation of mental health needs and services within the region;

(b) Submission to the department and to each of the participating counties within the region of plans and budget proposals to provide and support mental health services within the region;

(c) Establishment of a recommended proportionate level of financial participation by each of the counties involved in the provision of mental health service within the limits of this section;

(d) Receipt and administration of such moneys and other support as are made available for the purpose of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, tax moneys, gifts, donations, and other support.

All funds so received by the board shall be used to carry out the purposes of this act.

(e) Supervision by appropriate administrative staff personnel of the operation of community mental health services in the region;

(f) Keeping all records of the board and making reports which are required.

(4) Regional mental health board members shall be reimbursed from funds of the board for actual and necessary expense incurred in attending meetings and in the discharge of other board duties when assigned by the board.

(5) The regional board of mental health may submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share, not later than June 10 in each year. If the board of county commissioners includes in the county budget the county's proportionate share of the regional board's budget, it shall be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region shall be derived from the county's general fund. If the general fund is insufficient to meet the approved budget, a levy not to exceed one (1) mill may be made on the taxable valuation in addition to all other taxes allowed by law to be levied on such property.

(6) The regional board of mental health, with the approval of the department, may establish a schedule of fees for mental health services supported by financial contributions of the region's participating counties. The fees shall be paid by each nonparticipating county for services rendered to the residents of the nonparticipating county. The fees may be received by the board and used to implement the budget and to provide services.

History: En. Sec. 5, Ch. 246, L. 1967;
amd. Sec. 66, Ch. 120, L. 1974.

Compiler's Notes

The Community Mental Health Centers Act, referred to in subsection (1), is compiled in the United States Code as Tit. 42, secs. 2681 to 2687.

Amendments

The 1974 amendment substituted "board of health and environmental sciences" in subsection (1) for "state board of health"; substituted "department" for "division of mental hygiene" in subsections (2) and (6) and subdivision (3)(b); and made minor changes in phraseology and punctuation.

80-2407.1. Fees retained by regional board. All fees received for the treatment of patients under the community mental health services program, Warm Springs state hospital, shall be retained by the regional board to the extent necessary to assure full federal funding. If retention by the regional boards of all fees received for such treatment ceases to be a requirement for full federal funding, then forty per cent (40%) of these fees shall be deposited in the general fund.

History: En. Sec. 1, Ch. 372, L. 1974.

Title of Act

An act to allow the regional board to retain all fees received for the treatment of patients under the community mental health services program and to rescind the requirement in Senate Bill No. 51, 1973 Session, providing for the deposit of forty per cent (40%) of these fees in the general fund.

Deposit of Funds

Section 1 of Ch. 372, Laws 1974 contained a provision as follows: "Subject to the provisions of this act, the requirement that forty per cent (40%) of these fees be deposited in the general fund as provided in Senate Bill No. 51, 1973 Session, is rescinded, retroactive to the date of enactment of that provision."

80-2408. Continuation of services. Nothing in this act shall be construed to prevent the continuation of existing mental health services or facilities.

History: En. Sec. 6, Ch. 246, L. 1967.

80-2409. Availability of services. The services of the department are available without discrimination on the basis of race, color, creed, or ability to pay, and shall comply with Title VI of the Civil Rights Act of 1964.

History: En. Sec. 7, Ch. 246, L. 1967;
amd. Sec. 67, Ch. 120, L. 1974.

Compiler's Notes

Title VI of the Civil Rights Act of 1964, referred to in this section, is compiled in the United States Code as Tit. 42, secs. 2000d to 2000d-4.

Amendments

The 1974 amendment substituted "de-

partment" for "division of mental hygiene of the department of institutions"; and made minor changes in phraseology and punctuation.

Repealing Clause

Section 8 of Ch. 246, Laws 1967 repealed all acts and parts of acts in conflict therewith.

80-2410. Mental health centers established—staffing. (1) There are mental health centers in Miles City and Glasgow for the care and treatment of mentally ill persons residing in Montana. Each center shall be staffed with at least one (1) of each of the following:

- (a) Psychiatrist;
- (b) Psychologist;
- (c) Psychiatric nurse or social worker.

(2) Each center shall provide the following services:

- (a) Short term inpatient service;
- (b) Partial inpatient service;
- (c) Rehabilitation;
- (d) Communities education.

History: En. Sec. 1, Ch. 255, L. 1967; amd. Sec. 68, Ch. 120, L. 1974.

Title of Act

An act requiring the board of institutions to establish mental health centers in Miles City and Glasgow for care and treatment of mentally ill persons, providing staff and service requirements to be under supervision and regulations of the board; requiring the board to establish, construct, equip, maintain and staff a mental retardation center at Glendive, providing for residential and outpatient care

of mentally retarded persons as an extension of the state training school and hospital under supervision and regulations of the board, not to exceed two hundred bed units; and providing for temporary transfers to state training school and hospital at Boulder.

Amendments

The 1974 amendment substituted "There are" at the beginning of the section for "The board of institutions shall establish"; and made minor changes in phraseology, punctuation and style.

80-2411. Supervision of mental health centers. The mental health centers shall be organized and supervised by the department, under rules authorized in section 80-1405.

History: En. Sec. 2, Ch. 255, L. 1967; amd. Sec. 69, Ch. 120, L. 1974.

Amendments

The 1974 amendment deleted "estab-

lished" before "organized"; substituted "department" for "board of institutions"; and made minor changes in phraseology.

80-2412. Interstate compact on mental health enacted—text. The interstate compact on mental health as contained herein is hereby enacted into law and entered into by this state with all other jurisdiction legally joining therein in the form substantially as follows:

The contracting states solemnly agree, that:

Article I. The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by co-operative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

Article II. As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "Aftercare" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article III. (a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or treatment in an institution in that state irrespective of his residence, settlement, or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnish all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time

and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

Article IV. (a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identify of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

Article V. Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escapee in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

Article VI. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

Article VII. (a) No person shall be deemed a patient of more than one (1) institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two (2) or more party states may, by making a specific arrangement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

Article VIII. (a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

Article IX. (a) No provisions of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison,

jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

Article X. (a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general co-ordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

Article XI. The duly constituted administrative authorities of any two (2) or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or co-operative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

Article XII. This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

Article XIII. (a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one (1) year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII (b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

Article XIV. This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

The director of the department of institutions, hereafter called "the director," shall be the compact administrator and shall have the power to make any rules and regulations necessary for the administration of this article. The director shall co-operate with all departments, agencies,

and officers of the state and any political subdivision thereof to facilitate the proper administration of the interstate compact on mental health or of any supplementary agreement or agreements entered into by this state thereunder.

The director may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact.

The department of institutions in its annual budget shall include such amounts necessary to discharge the financial obligations incurred by it to carry out the purposes of the interstate compact on mental health, and the general assembly shall appropriate such sums necessary therefor.

The compact administrator is hereby directed to consult with the immediate family of any proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to make no transfer out of the state without approval of the district or probate court. Before granting such approval the court shall hold such hearings as it deems appropriate. In addition, the court shall designate some appropriate person to deliver written notice of the proposed transferee's right to a hearing to the proposed transferee and his guardian ad litem. The person serving such notices shall make a written return to the court that such has been done. At the conclusion of such hearing, if any, the court may approve the proposed transfer, order the release of the proposed transferee, or enter any other suitable order.

Duly authenticated copies of the article shall upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general, and the secretary of state of the United States, and the Council of State Governments.

History: En. Sec. 1, Ch. 112, L. 1971.

Title of Act

An act relating to the interstate compact on mental health authorizing the state of Montana to enter into a compact with any of the United States, its territories and possessions, for the treatment of mentally ill and mentally deficient; provid-

ing for a "compact administrator"; and providing an effective date.

Effective Date

Section 2 of Ch. 112, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

CHAPTER 25—MONTANA CENTER FOR THE AGED

Section

80-2501. Location and function of center.

80-2502. Transfer of patients to and from hospitals—notice to relatives.

80-2501. Location and function of center. The institution located at Lewistown is the "Montana Center for the Aged." The primary function of the center is the care and treatment of senile persons who have been admitted to Warm Springs state hospital and subsequently transferred to the center. As used in this chapter "senility" means mental illness resulting from the aging process.

History: En. Sec. 71, Ch. 199, L. 1965; Springs state hospital" for "state hospital" and substituted "chapter" for "act."
amd. Sec. 70, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted "Warm

80-2502. Transfer of patients to and from hospitals—notice to relatives.

With the approval of the department of institutions, the Warm Springs state hospital may transfer a patient to the center or from the center to the state hospital. With the approval of the department the state hospital may transfer a patient residing at the center to Galen state hospital. Unless a medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the department shall notify the patient's parent, guardian, or spouse, or if none is known, his nearest relative or friend. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 72, Ch. 199, L. 1965; amd. Sec. 71, Ch. 120, L. 1974.

pital"; substituted "department" for "department of institutions" in two places; substituted "Galen state hospital" for "state pulmonary disease hospital"; and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "Warm Springs state hospital" for "state hos-

CHAPTER 26—MENTAL RETARDATION—DEVELOPMENTAL DISABILITIES**Section**

- 80-2604. Primary function of Boulder river school and hospital and Eastmont training center.
- 80-2605. Mental retardation defined.
- 80-2606. Functions of department.
- 80-2607. Establishment of community-centered programs through local agencies and nonprofit corporations.
- 80-2608. Administration—allocation of appropriated moneys—local services to mentally retarded.
- 80-2609. Factors to be considered in approving or rejecting programs.
- 80-2610. Rules—other powers of director incident to administration of community-centered services.
- 80-2611. Title.
- 80-2612. Definitions.
- 80-2613. Responsibilities of state.
- 80-2614. Rules and regulations.
- 80-2615. Community services.
- 80-2616. State council of developmental disability services and facilities created.
- 80-2617. Developmental regions to be established—structure and organization.
- 80-2618. County funding to be supplied.
- 80-2619. Counties and municipalities permitted to contribute to facilities outside their jurisdiction.
- 80-2620. When counties may reduce funding.
- 80-2621. Eligibility for services.
- 80-2622. Act applicable to reservation Indians.
- 80-2623. No effect on existing facilities.
- 80-2624. Discrimination forbidden.
- 80-2625. Severability.

80-2601 to 80-2603. Repealed.**Repeal**

Sections 80-2601 to 80-2603 (Secs. 1 to 3, Ch. 111, L. 1971), relating to the estab-

lishment of the division of mental retardation, were repealed by Sec. 96, Ch. 120, Laws of 1974.

80-2604. Primary function of Boulder river school and hospital and Eastmont training center. The primary functions of the Boulder river school and hospital and the Eastmont training center are the care, treatment, training, education, and necessary medical treatment of mentally retarded persons.

History: En. Sec. 4, Ch. 111, L. 1971; amd. Sec. 72, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted

"Boulder river school and hospital and Eastmont training center" for "institutions in division" in the caption; and made minor changes in phraseology and punctuation.

80-2605. Mental retardation defined. As used in this act "mental retardation" is a state of subnormal development of the human organism which results in the mental incapability of the person affected to adapt himself to the daily demands of a social environment.

History: En. Sec. 5, Ch. 111, L. 1971.

80-2606. Functions of department. The department of institutions shall:

- (1) Take cognizance of persons affected by mental retardation in the state;
- (2) Initiate preventive mental retardation activities in the state;
- (3) Make scientific and medical investigations relative to the incidence, cause, prevention, and care of mental retardation;
- (4) Collect and disseminate information relating to mental retardation;
- (5) Prepare plans for the development of mental retardation services in the state;
- (6) Establish and conduct clinics in cities and towns in the state for the diagnosis, evaluation, and treatment of mental retardation;
- (7) Receive from federal and other agencies, private and public, grants of money for the development of mental retardation services within the state, and use the money for the purposes for which they were granted.

History: En. Sec. 6, Ch. 111, L. 1971; amd. Sec. 73, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted "department" for "division of mental retardation of the department of institutions" in the first sentence; and made minor changes in phraseology and punctuation.

Repealing Clause

Section 7 of Ch. 111, Laws 1971 read "Sections 80-2301 and 80-2302, R. C. M. 1947, are hereby repealed."

Effective Date

Section 8 of Ch. 111, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

80-2607. Establishment of community-centered programs through local agencies and nonprofit corporations. The legislative assembly, in recognition of the wide and varied needs of the mentally retarded persons of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, and in order to reduce the need for custodial care in state institutions, establishes by this act a community-centered program through interagency co-operation and co-ordination of the local agencies that offer services for mentally retarded persons, and establishes a program to purchase or to provide services through local nonprofit corporations.

History: En. Sec. 1, Ch. 165, L. 1971.

Title of Act

An act authorizing the department of

institutions to purchase services in local communities for mentally-retarded persons; providing for nonprofit corporate boards to administer such programs locally; pro-

viding for the allocation of appropriated moneys; providing for approval of programs; providing for the administration by

the department of institutions, and providing an effective date.

80-2608. Administration—allocation of appropriated moneys—local services to mentally retarded. (1) The department may purchase or provide services for mentally retarded persons through local nonprofit corporations. The department shall allocate to these local nonprofit corporations, for the purchase of services for mentally retarded persons, the money which is appropriated therefor. The corporations shall purchase services from public or private nonprofit sheltered workshops, day-care training centers, and other private and public facilities, universities, colleges, public schools, and preschool nurseries, which have approved facilities and offer an approved program. In case these approved facilities and services are not available in the community, the nonprofit corporations may develop, operate, and provide the services directly. Payment for the services by the department shall be in an amount not to exceed seventy-five per cent (75%) of the annual cost of the approved community-centered programs. Of the amounts appropriated by the legislature for the purchase of services for mentally retarded persons under the provisions of this section, a sum not to exceed ten per cent (10%) of the amounts appropriated may be used by the department for the purpose of purchasing the services without regard to matching requirements. In arriving at the cost of services, the department shall set a valuation on the personal services and materials in kind which are contributed to local agencies or institutions from which the services are purchased, but the contributions shall not exceed one-half ($\frac{1}{2}$) of the required community share of the cost of services. Funds allocated to the nonprofit corporations by the department shall be used only for those services that are not a responsibility of another agency.

(2) For the purposes of allocating money under this section, the nonprofit corporations shall submit to the department a proposed budget. This budget shall include proposed expenditures, including services these corporations intend to purchase from various local agencies or institutions that offer services for mentally retarded persons.

(3) Governmental units, including but not limited to, counties, municipalities, school districts, or state institutions of higher learning may at their own expense, purchase services or furnish money, materials, and services for mentally retarded persons, through these nonprofit corporations.

History: En. Sec. 2, Ch. 165, L. 1971; amd. Sec. 74, Ch. 120, L. 1974.

tences of subsection (1); substituted "department" for "office of the director of the department of institutions" after "amounts appropriated may be used by the" in the sixth sentence of subsection (1); and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "department" for "department of institutions" in the first, second and last sen-

80-2609. Factors to be considered in approving or rejecting programs. (1) In approving or rejecting community-centered programs for the purchase of services to mentally retarded persons, the department shall consider the following factors:

- (a) The adequacy and utilization of existing facilities and programs in the community, such as public and private nonprofit sheltered workshops, public school programs, preschool nurseries, and day-care centers, and universities and colleges;
- (b) The adequacy of participation by state services, including but not limited to, public welfare, public health, rehabilitation, and education;
- (c) General community interest and participation;
- (d) The establishment of programs for the prevention of institutionalization, and habilitation when they do not already exist.
- (2) The department shall require the following in the community administration of this program:

- (a) Each community-centered program shall be under the control and direction of a board of directors or trustees of a corporation not for profit.
- (b) The members of the board of directors or trustees shall be representative of, but not limited to, public, private, or voluntary agencies, including political subdivisions of the state, which participate in a program for mentally retarded persons in the community.
- (c) The community incorporated board shall make application annually to the department to participate in the state program for mentally retarded persons, and only programs shall be approved which meet the requirements set forth in subsection (1) of this section.

History: En. Sec. 3, Ch. 165, L. 1971; amd. Sec. 75, Ch. 120, L. 1974.

of institutions" in subsection (1) and "director" in subsection (2); substituted "department" for "department of institutions" in subdivision (2)(c); and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment substituted "department" for "director of the department

80-2610. Rules—other powers of director incident to administration of community-centered services. The director of institutions may adopt reasonable rules to govern the administrative proceedings and procedures necessary to carry out the provisions of this act. The rules may be amended or revoked from time to time. The director may also adopt standards for and supervise programs supported under this act, and prescribe the form of reports, budgets, holdings of meetings, investigations, and evaluations necessarily incident to the administration of this act.

History: En. Sec. 4, Ch. 165, L. 1971; amd. Sec. 76, Ch. 120, L. 1974.

gining of the section; and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "director of institutions" for "director of the department of institutions" at the be-

Effective Date

Section 5 of Ch. 165, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

80-2611. Title. This act shall be known and may be cited as the "Montana Developmental Disabilities Services and Facilities Act of 1974."

History: En. 80-2611 by Sec. 1, Ch. 325, L. 1974.

within Montana; enabling counties to levy a tax for the authorizing services and facilities for the developmentally disabled; establishing a state council for developmental disabilities services and facilities; enabling counties to levy a tax

Title of Act

An act authorizing services and facilities for the developmentally disabled

for the support of services and facilities for the developmentally disabled, establishing developmental disability regions and regional councils; and creating

the "Montana Developmental Disabilities Services and Facilities Act of 1974"; and providing an effective date.

80-2612. Definitions. As used in this act:

(1) "Developmental disabilities" means disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurological handicapping conditions closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; which condition has continued or can be expected to continue indefinitely and constitutes a substantial handicap of such individuals.

(2) "Developmental disabilities facility" means any service or group of services offering care to the developmentally disabled on an inpatient, outpatient, residential, clinical or other programmatic basis.

(3) "Comprehensive developmental disability center" means a system of services not necessarily encompassed within one building offering any or all of the following sixteen (16) basic services with the intention of providing alternatives to institutionalization:

- (a) evaluation services,
- (b) diagnostic services,
- (c) treatment services,
- (d) day care services,
- (e) training services,
- (f) education services,
- (g) employment services,
- (h) recreation services,
- (i) personal care services,
- (j) domiciliary care services,
- (k) special living arrangements services,
- (l) counseling services,
- (m) information and referral services,
- (n) follow-along services,
- (o) protective and other social and sociolegal services,
- (p) transportation services.

Provision of service by a comprehensive center shall be authorized only when a generic service agency declines to provide such service.

History: En. 80-2612 by Sec. 2, Ch. 325,
L. 1974.

80-2613. Responsibilities of state. The state of Montana shall:

(1) take cognizance of matters affecting the developmentally disabled citizens of the state;

(2) initiate a preventive developmental disabilities program, which program shall include, but not be limited to, the implementation of developmental disabilities care and treatment, and prevention and research as can best be accomplished by community centered services. Every means shall be utilized to initiate and operate such service program in co-operation with

local agencies, as established under provisions of sections 5 [80-2615] and 7 [80-2617] of this act;

(3) make scientific and medical research investigations relative to the incidence, cause, prevention and care of developmental disabilities;

(4) collect and disseminate information relating to developmental disabilities;

(5) prepare, with the advice of the state council created in section 6 [80-2616] herein, an annual comprehensive plan for the initiation and maintenance of developmental disabilities services in the state. Such services shall include, but not be limited to, community comprehensive developmental disabilities services as referred to in section 2 [80-2612];

(6) provide by regulation for the evaluation of persons who shall apply for services, or persons who shall be admitted either as inpatients or outpatients into the Boulder river school and hospital, or other developmental disability clinic;

(7) receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms or corporations, grants of money, receipts from fees, gifts, supplies, materials, and contributions to initiate and maintain developmental disabilities services within the state.

History: En. 80-2613 by Sec. 3, Ch. 325,
L. 1974.

80-2614. Rules and regulations. The state of Montana shall control developmental disabilities programs which receive any state assistance by establishing and promulgating rules, regulations and standards for providing developmental disabilities facilities and services. It shall set minimum standards for programs, establish appropriate qualifications and compensation scales and personnel policies for persons employed in such programs. All developmental disabilities facilities and services shall comply with existing federal guidelines and with requirements which will enable the services and facilities to qualify for available aid funds. However, nothing herein shall imply the necessity for facilities serving the developmentally disabled to meet the same or equal standards as licensed medical facilities, unless the developmental disabilities facility is providing professional or skilled medical care.

History: En. 80-2614 by Sec. 4, Ch. 325,
L. 1974.

80-2615. Community services. (1) The state of Montana may establish and administer community comprehensive services, clinics or other facilities throughout the state for the purpose of aiding in the prevention, diagnosis, amelioration or treatment of developmental disabilities. Such centers, clinics or other services may be provided directly by state agencies, or indirectly through contract or co-operative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons or in accredited health or long term care facilities.

(2) State funds specifically appropriated for regional developmental disabilities service programs may not exceed fifty per cent (50%) of the

total expenditures of the programs. Any fees collected under this act shall be deposited to the state's general fund in proportion to the state's contribution.

History: En. 80-2615 by Sec. 5, Ch. 325,
L. 1974.

80-2616. State council of developmental disability services and facilities created. For purposes of administration of this act, there is hereby created the Montana state council of developmental disabilities services and facilities, hereinafter referred to as the "state council."

(1) The state council shall be composed of twenty-three (23) members, appointed or reappointed annually by the governor, and shall consist of the following:

(a) one-third ($\frac{1}{3}$) of the members shall be consumers or representatives of consumers or consumer organizations in the disciplines of developmental disabilities;

(b) the director or deputy director of the departments of social and rehabilitation services, health and environmental sciences, institutions, and labor;

(c) the superintendent of public instruction, or a deputy designated by the superintendent of public instruction;

(d) one (1) recognized private professional in each of the disciplines of medicine, law, psychology, social work, and education;

(e) two (2) members of the state Senate;

(f) two (2) members of the state House of Representatives;

(g) the administrator of the division of vocational rehabilitation;

(h) the remaining member shall be appointed from the public at large;

(2) The state council shall meet no less frequently than three (3) times per year, and may meet more frequently at the call of the chair. The state council shall annually choose its own chairman, vice-chairman, and secretary.

(a) Members of the state council who are not full-time employees of the state of Montana shall be reimbursed for actual and necessary costs of travel incident to attending meetings and in the authorized performance of their duties.

(b) Such members, who are not full-time employees of the state of Montana, shall be paid an honorarium for each day of official duty in an amount established by the administering state department, but not to exceed any limit established by law.

(3) The state council shall provide advice to state agencies and regional councils in the provision or purchase of services for the developmentally disabled, and in the expenditure of funds granted or appropriated for the benefit of the developmentally disabled.

(4) The state council shall have such other jurisdiction and responsibility as may be assigned by the governor, or as required by federal law or regulation.

(5) The state council may be assigned to a state department by executive order, or in lieu of such order, the state council shall be assigned to the department of social and rehabilitation services.

History: En. 80-2616 by Sec. 6, Ch. 325,
L. 1974.

80-2617. Developmental regions to be established—structure and organization. (1) For further purposes of administration of this act, developmental disability regions shall be established within the state, which regions shall conform with the governor's multi-county regions.

(2) Upon establishment of a developmental disability region, a governing board of directors shall be created, with the following composition:

(a) One (1) member shall be appointed by the board of county commissioners of each of the participating counties within the region;

(b) Two (2) members, who shall be residents of the region, shall be appointed by the governor.

(c) Members of a regional board shall be appointed or reappointed annually.

(d) The state council shall promulgate guidelines for the administration of regional boards.

(3) The duties of the organized regional developmental disabilities boards shall include:

(a) annual review and evaluation of needs and services within said region; and

(b) submitting to the state council, the appropriate state agencies, and to each of the participating counties within the region, plans and budget proposals to provide and support developmental disabilities services within the region;

(c) establishment of a recommended proportionate level of financial participation by each of the counties involved in the provision of developmental disability services within the limits of this section;

(d) receipt and administration of such moneys and other support as are made available for the purpose of providing developmental disability services by the participating agencies, including grants from the United States government and other agencies, receipt of established fees for services rendered, tax moneys, gifts, donations and other support;

(e) supervision by appropriate administrative staff personnel of the operation of community developmental disability services in the region;

(f) to keep all records of the board and make such reports as may be required.

(4) Regional developmental disability board members, who are not full-time employees of the state of Montana or of a county, shall be reimbursed from funds of the board for actual and necessary expense incurred in attending meetings and in the discharge of other duties when assigned by the board.

(5) The regional board of developmental disabilities shall submit to the board of county commissioners of each of the counties within the con-

stituted developmental disability region an annual budget, which shall specify each county's recommended proportionate share of the regional developmental disabilities' budget.

(a) Upon written agreement between the regional board and a county, the county shall be designated as a participating county.

(b) Counties choosing not to participate may be assessed fees for developmental disability services which are provided to residents of such non-participating counties; provided, however, that no county shall be required to make any such payment involuntarily.

The schedule of fees may be established by the regional board of developmental disabilities, with the approval of the state council. Such fees shall be an obligation of the county and may be received by the regional board to be used to provide approved services.

History: En. 80-2617 by Sec. 7, Ch. 325,
L. 1974.

80-2618. County funding to be supplied. Every participating county of the state shall annually budget and appropriate for the establishment, support and operation of public developmental disabilities facilities and services an amount equal to fifty cents (\$.50) per capita of the population of such county as shown by the division of planning and economic development of the state department of intergovernmental relations. The appropriation may be in an amount greater than the minimum herein provided and shall be made under the authority contained in section 9 [80-2619] herein and may be appropriated either out of the general fund of the county or by use of the permissive special mill levy as herein provided.

History: En. 80-2618 by Sec. 8, Ch. 325,
L. 1974.

80-2619. Counties and municipalities permitted to contribute to facilities outside their jurisdiction. (1) The boards of county commissioners of the several counties and the governing bodies of municipalities of this state, may, in their discretion, contribute sums of money annually to any developmental disabilities facility approved by the state of Montana, or to each of such facilities, without regard to whether they are within or outside of their respective jurisdictions. The boards of county commissioners of the participating counties may levy a tax up to, but not to exceed, one (1) mill on each dollar of taxable property within the county, which tax levy hereby authorized shall be in addition to all other county tax levies, all proceeds of which tax, if levied, shall be used for the sole purpose of support of such developmental disabilities facilities.

(2) For the purpose of carrying out the provisions of this section, such boards of county commissioners and such governing bodies of municipalities may appropriate out of the general fund of their respective counties or municipalities.

History: En. 80-2619 by Sec. 9, Ch. 325,
L. 1974.

80-2620. When counties may reduce funding. In the event that funds appropriated by the legislature for any fiscal year are not equal to the

amount generated by the counties by authority of this act, the counties may reduce their appropriations by an equal amount so that county funds expended for programming purposes under this act shall not exceed state funds.

History: En. 80-2620 by Sec. 10, Ch. 325, L. 1974.

80-2621. Eligibility for services. Any person suspected of a developmental disability shall be eligible for initial intake and for diagnostic and counseling services through any comprehensive developmental disability center, without reference to any other eligibility criteria.

History: En. 80-2621 by Sec. 11, Ch. 325, L. 1974.

80-2622. Act applicable to reservation Indians. For purposes of this act, Indian people living within federal Indian reservations shall be entitled to all services provided for under this act.

History: En. 80-2622 by Sec. 12, Ch. 325, L. 1974.

80-2623. No effect on existing facilities. Nothing in this act shall be construed to prevent the continuation of existing developmental disabilities facilities or services in the state.

History: En. 80-2623 by Sec. 13, Ch. 325, L. 1974.

80-2624. Discrimination forbidden. The services provided under this act shall be made available without discrimination on the basis of race, color, creed or ability to pay and shall comply with the provisions of Title VI of the federal Civil Rights Act of 1964.

History: En. 80-2624 by Sec. 14, Ch. 325, L. 1974.

80-2625. Severability. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If the part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

History: En. 80-2625 by Sec. 15, Ch. 325, L. 1974.

Effective Date

Section 16 of Ch. 325, Laws 1974 read
"This act shall be effective on January 1, 1975."

TITLE 81—STATE LANDS

Chapter

1. Department of state lands—board of land commissioners—general provisions, 81-102 to 81-108.
3. Selection—classification, appraisal and exchange of lands, 81-301, 81-302, 81-304.
4. Leasing of agricultural lands—grazing lands and city and town lots, 81-402, 81-404, 81-405, 81-407, 81-408, 81-412 to 81-416, 81-418, 81-419, 81-421 to 81-424, 81-426, 81-428, 81-433, 81-436.
5. Coal mining leases and permits, 81-501, 81-502, 81-506, 81-508, 81-510.
6. Prospecting permits and mining leases, 81-601 to 81-608, 81-611 to 81-613, 81-616.
7. Leases and permits for deposits of stone, gravel, sand and other minerals, 81-701, 81-702, 81-704.
8. Granting of easements for public purposes, 81-801 to 81-803.
9. Sale of state lands, 81-901, 81-902, 81-905, 81-908, 81-910, 81-912, 81-915, 81-917, 81-919, 81-921, 81-923, 81-924, 81-926 to 81-928, 81-930, 81-932.
11. State lands and investments—miscellaneous provisions, 81-1101 to 81-1103, 81-1110, 81-1115 to 81-1122.
13. Reimbursement of federal government for certain emergency conservation work, Repealed—Section 116, Chapter 428, Laws of 1973.
14. State forests—timber sales—firewardens, 81-1401, 81-1404, 81-1406, 81-1408, 81-1409, 81-1411 to 81-1413, 81-1415.
16. Timber sales—general provisions, 81-1601, 81-1604.
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20. Water for state lands, 81-2018.
22. Exchange of timbered, cut or burned over lands, 81-2201 to 81-2205.
23. Certain stream and lake beds and islands property of state, 81-2302, 81-2303, 81-2305.
24. Development of state land resources, 81-2401 to 81-2408.
25. Preservation of antiquities, 81-2501 to 81-2514.
26. Lease of geothermal resources, 81-2601 to 81-2613.
27. Natural areas act, 81-2701 to 81-2713.

CHAPTER 1—DEPARTMENT OF STATE LANDS—BOARD OF LAND COMMISSIONERS—GENERAL PROVISIONS

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| 81-102. | Definitions. |
| 81-103. | Powers and duties of board. |
| 81-103.1. | Commissioners authorized to lease lands. |
| 81-104. | Meetings of board. |
| 81-105. | Powers and duties of the department. |
| 81-106. | Board to correct errors. |
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| 81-108. | Fees. |

81-101. (1805.1) Repealed.

Repeal	
Section 81-101 (Sec. 1, Ch. 60, L. 1927; Sec. 40, Ch. 100, L. 1973), creating the de-	partment of state lands and investments, was repealed by Sec. 116, Ch. 428, Laws 1973.

81-102. (1805.2) Definitions. Unless the context requires otherwise, in this title:

(1) “Department” means the department of state lands provided for in Title 82A, chapter 11.

(2) “Board” means the board of land commissioners provided for in article X, section 4 of the constitution of this state.

(3) "Commissioner" means the commissioner of state lands provided for in section 82A-1104.

(4) "State land" or "lands" means lands granted to the state by the United States for any purpose, either directly or through exchange for other lands; lands deeded or devised to the state from any person; and lands that are the property of the state through the operation of law. The term does not include lands the state conveys through the issuance of patent, or those lands used for building sites, campus grounds, or experimental purposes by any state institution that are the property of that institution.

History: En. Sec. 2, Ch. 60, L. 1927; amd. Sec. 7, Ch. 184, L. 1961; amd. Sec. 2, Ch. 428, L. 1973.

Amendments

The 1973 amendment inserted "Unless the context requires otherwise" at the beginning of the section; numbered the sub-

divisions; deleted "and investments" from the titles of the department and commissioner in subdivisions (1) and (3); inserted the constitutional and statutory references at the ends of subdivisions (1), (2) and (3); deleted a clause defining "assistant commissioner"; and made minor changes in phraseology.

81-103. (1805.3) Powers and duties of board. The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands, and subject to the investment authority of the board of investments, the funds arising from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle is that these lands and funds are held in trust for the support of education, and for the attainment of other worthy objects helpful to the well-being of the people of this state; and the board shall administer this trust to secure the largest measure of legitimate and reasonable advantage to the state. The board shall manage these lands under the multiple-use management concept defined as: The management of all the various resources of the state lands so that they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources, and harmonious and co-ordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources.

History: En. Sec. 3, Ch. 60, L. 1927; amd. Sec. 1, Ch. 113, L. 1969; amd. Sec. 1, Ch. 67, L. 1973; amd. Sec. 3, Ch. 428, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 67 and once by Ch. 428. To the extent that the amendatory enactments are conflicting, the provisions of Ch. 428, the later enactment, are set out above by the compiler.

Amendments

The 1969 amendment inserted the third

sentence providing for management of state-owned lands under the multiple-use concept.

Chapter 67, Laws of 1973, added the auditor to the board.

Chapter 428, Laws of 1973, deleted "consisting of the governor, superintendent of public instruction, secretary of state and attorney general, as provided by the constitution" and "shall be the governing board of the department of state lands and investments" following "board" at the beginning of the first sentence; inserted "subject to the investment authority of the board of investments" in the first

sentence; deleted a final sentence saving inherent powers of the board; and made minor changes in style, phraseology and punctuation.

Leasing State-owned Land

State board of land commissioners had

discretion to award ten-year lease to bidder at 33 1/3 per cent crop share, rather than to another who bid 50 per cent, especially where lessee had farmed the land before and the board was taking less risk. State ex rel. Thompson v. Babcock, 147 M 46, 409 P 2d 808.

81-103.1. Commissioners authorized to lease lands. The board of land commissioners is authorized to lease state lands for uses other than agriculture, grazing, timber harvest or mineral production under such terms and conditions which best meet the duties of the board as specified in section 81-103, provided however that the lease period for such leases, except for power and school site leases, may not be for longer than twenty-five (25) years.

History: En. 81-103.1 by Sec. 1, Ch. 135, L. 1974.

Title of Act

An act to provide for the lease terms of

state lands for uses other than agriculture, grazing, timber harvest, or mineral production and to amend sections 81-402, 81-407 and 81-408, R. C. M. 1947, to provide for lease terms on city and town lots.

81-104. (1805.4) Meetings of board. The board shall hold regular meetings at least once each month, and may hold special meetings whenever considered necessary, upon call of the president or a majority of the members. Three (3) members of the board constitute a quorum for the transaction of business. The governor is the president of the board; in his absence the lieutenant governor, shall preside, and in his absence the superintendent of public instruction shall preside.

History: En. Sec. 4, Ch. 60, L. 1927; amd. Sec. 4, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "at least once each month" for "on the second Wednesday of each month" near the beginning of the first sentence; substituted "the

lieutenant governor, shall preside, and in his absence" for "in the absence of the lieutenant governor" in the middle of the last sentence; deleted two final sentences authorizing rules for the conduct of meetings and requiring minutes to be kept and documents to be preserved; and made minor changes in phraseology.

81-105. (1805.8) Powers and duties of the department. Under the direction of the board of land commissioners, the department has charge of the selecting, exchange, classification, appraisal, leasing, management, sale, or other disposition of the state lands. It shall perform such other duties the board directs, the purpose of the department demands, or the statutes require. It shall collect and receive all moneys payable to the state through its office as fees, rentals, royalties, interest, penalties, or payments on mortgages or lands purchased from the state or derived from any other source. It shall issue a receipt for each cash payment, or whenever requested by the payer.

History: En. Sec. 8, Ch. 60, L. 1927; amd. Sec. 2, Ch. 26, L. 1971; Sec. 81-204, R. C. M. 1947; redes. 81-105 and amd. by Sec. 5, Ch. 428, L. 1973.

Amendments

The 1971 amendment eliminated the requirements for triplicate receipts for payments made to the state through the office

of the state commissioner of lands and investments, and substituted the last sentence, providing for receipts for cash payment or upon request.

The 1973 amendment renumbered this section; deleted a first sentence making the commissioner ex officio secretary of the board; substituted references to the department for references to the ex officio

secretary of the board; deleted "and the investment of funds arising therefrom or otherwise coming under the administration of the department" from the end of the first sentence; and made minor changes in phraseology.

Effective Date

Section 3 of Ch. 26, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 16, 1971.

81-106. (1805.115) Board to correct errors. The board shall correct errors, mistakes, and misdescriptions in deeds and conveyances of property to the state. Deeds or other conveyances shall be made and executed in the manner provided for the execution of patents by the state. The board may also correct errors in leases, certificates of purchase, patents, and other conveyances of property from the state, upon satisfactory proof that an error or mistake has been made.

History: En. Sec. 115, Ch. 60, L. 1927; Sec. 81-1108, R. C. M. 1947; redes. 81-106 and amd. by Sec. 73, Ch. 428, L. 1973.

Amendments

The 1973 amendment renumbered this section and made minor changes in style, phraseology and punctuation.

81-107. (1805.116) Money paid by mistake to be refunded. If any money is erroneously paid to the state on any permit, lease, certificate of purchase, patent, loan, or in any other transaction, the department shall refund that money to the person entitled to it from the proper fund.

History: En. Sec. 116, Ch. 60, L. 1927; Sec. 81-1109, R. C. M. 1947; redes. 81-107 and amd. by Sec. 74, Ch. 428, L. 1973.

section; substituted the reference to the department for a reference to the state board of land commissioners; and made minor changes in style, phraseology and punctuation.

Amendments

The 1973 amendment renumbered this

81-108. (1805.120) Fees. The department may prescribe fees, with the approval of the board, for the issuance, filing, or making of a copy of any instrument or for any other service.

History: En. Sec. 120, Ch. 60, L. 1927; amd. Sec. 19, Ch. 121, L. 1965; amd. Sec. 11, Ch. 22, L. 1971; Sec. 81-1113, R. C. M. 1947; redes. 81-108 and amd. by Sec. 76, Ch. 428, L. 1973.

lands and investments to prescribe such fees with the approval of the board of land commissioners; and made a minor change in phraseology in the final clause.

The 1973 amendment renumbered this section; substituted "department" for "commissioner of state lands and investments"; and substituted the general power to prescribe fees for specifically enumerated powers.

Amendments

The 1971 amendment eliminated the statutory schedule of fees and granted general authority for the commissioner of

CHAPTER 2—COMMISSIONER OF STATE LANDS AND INVESTMENTS

Section

81-204. [Transferred].

81-205. [Transferred].

81-201 to 81-203. (1805.5 to 1805.7) Repealed.

Repeal

Sections 81-201 to 81-203 (Secs. 5 to 7, Ch. 60, L. 1927; Sec. 2, Ch. 138, L. 1943; Sec. 37, Ch. 177, L. 1965), relating to the

commissioner of state lands and investments and the state forester, were repealed by Sec. 116, Ch. 428, Laws 1973.

81-204. [Transferred.]**Compiler's Notes**

Section 5 of Ch. 428, Laws 1973, redesignated this section as sec. 81-105.

81-204.1. Repealed.**Repeal**

Section 81-204.1 (Sec. 1, Ch. 26, L. 1971), relating to deletion of requirement of trip-

licate receipts of commissioner, was repealed by Sec. 116, Ch. 428, Laws 1973.

81-205. [Transferred.]**Compiler's Notes**

Section 6 of Ch. 428, Laws 1973 redesignated this section as sec. 81-1122.

81-206. (1805.10) Repealed.**Repeal**

Section 81-206 (Sec. 10, Ch. 60, L. 1927), relating to the biennial report of the commissioner of state lands and invest-

ments, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

81-207 to 81-210. (1805.12 to 1805.14) Repealed.**Repeal**

Sections 81-207 to 81-210 (Secs. 12 to 14, Ch. 60, L. 1927; Sec. 3, Ch. 138, L. 1943; Sec. 1, Ch. 176, L. 1949; Sec. 1, Ch. 164, L. 1951; Sec. 1, Ch. 119, L. 1953; Sec. 4,

Ch. 225, L. 1963; Sec. 38, Ch. 177, L. 1965; Sec. 8, Ch. 237, L. 1967; Sec. 1, Ch. 22, L. 1971), relating to the state land commissioner and his office, were repealed by Sec. 116, Ch. 428, Laws 1973.

CHAPTER 3—SELECTION—CLASSIFICATION, APPRAISAL AND EXCHANGE OF LANDS

Section

81-301. Selection and location of lands granted by United States.

81-302. Classification—reclassification—records.

81-304. Exchange of lands with United States and counties—validation of prior actions.

81-301. (1805.15) Selection and location of lands granted by United States. Under the general direction of the board of land commissioners and as rapidly as the appropriations for the work will permit, the department shall select and locate all lands, except timberlands, granted to this state by the United States for any purpose, and not located by the grant itself. It shall also select and locate lands in lieu of all those lands in sections sixteen (16) and thirty-six (36) and in the other federal land grants which for any reason have been lost to the state. All selections shall as far as possible be in legal subdivisions. In the selection and location of these lands, careful attention shall be given to the water available and which may be appropriated for these lands for domestic use, livestock, and irrigation.

History: En. Sec. 15, Ch. 60, L. 1927; amd. Sec. 7, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted refer-

ences to the department for references to the commissioner; deleted "he shall cause to be performed without any unnecessary delay on his part all work necessary for the completion of these selections so that

the state may actually receive all the lands under its various grants" from the end of the third sentence; and made minor changes in style and phraseology.

81-302. (1805.16) Classification — reclassification—records. (1) The state lands are classified as follows:

(a) Class 1. Lands which are principally valuable for grazing purposes.

(b) Class 2. Lands which are principally valuable for the timber that is on them, or for the growing of timber or for watershed protection.

(c) Class 3. Lands which are principally valuable for the production of crops.

(d) Class 4. Lands which are principally valuable for uses other than grazing, crop production, timber production or watershed protection.

(2) The classification or reclassification shall be so made as to place state land in the class which best accomplishes the powers and duties of the state board of land commissioners as specified in section 81-103.

When state lands are classified or reclassified in accordance with these duties and responsibilities, special attention shall be paid to the capability of the land to support an actual or proposed land use authorized by each classification. A capability inventory shall be made prior to changing the classification of state lands. Such inventory shall include, when appropriate to the classification, information on soils capability, vegetation, wildlife use, mineral characteristics, public use, aesthetic values, cultural values, surrounding land use and any other resource, zoning or planning information which is related to the classification. Should a parcel of state land in one class have other multiple use or resource values which are of such significance that they do not warrant classification for the value, the land shall, nevertheless, be managed in so far as is possible to maintain or enhance these multiple-use values.

(3) It is the duty of the department to classify or reclassify state lands so that no state land will be sold, leased or used under a different classification from that to which it actually belongs.

(4) All field books, plats, maps, and records of the department shall show the class to which each tract therein belongs, and whether it belongs to the public schools of the state or to a state institution or other entity according to the grant or instrument by which title to the land has passed to the state; they shall also show whether or not the coal or other minerals in the land are reserved by the United States; and shall contain any other information the department considers necessary.

History: En. Sec. 16, Ch. 60, L. 1927; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974.

Amendments

The 1973 amendment numbered the subsections and lettered the subdivisions; deleted "according to the provisions of the

constitution" after "classified" in the preliminary clause of subsection (1); substituted "department" for "commissioner" near the end of subsection (6); and made minor changes in style and phraseology.

The 1974 amendment rewrote this section. For prior law, see parent volume.

81-304. (1805.19) Exchange of lands with United States and counties —validation of prior actions. (1) The board may enter into contracts

or agreements with the United States, or any department thereof having jurisdiction, for the waiving and relinquishment to the United States of any rights of the state in and to sections sixteen (16) and thirty-six (36) of any township and to any other sections of state lands, provided that the state shall in lieu of the rights so waived and relinquished receive from the United States other lands of equal or greater value.

(2) The board may accept on behalf of the state title in fee simple to any land owned by a county in the state, and may convey in exchange therefor state land of approximately the same area and of a value not higher than the land received from the county if the exchange will result in consolidating the state lands into more compact bodies.

(3) The current user of the land transferred to the United States may continue to enjoy the use of the land under terms and conditions required by the federal government and in accordance with the Multiple Use Act, and the current user on the land received from the United States may continue to utilize the land on the terms and conditions imposed by law or by the board.

History: En. Sec. 19, Ch. 60, L. 1927; amd. Sec. 1, Ch. 151, L. 1933; amd. Sec. 1, Ch. 117, L. 1951; amd. Sec. 1, Ch. 257, L. 1965; amd. Sec. 1, Ch. 39, L. 1967; amd. Sec. 9, Ch. 428, L. 1973.

Compiler's Notes

The Multiple Use Act, referred to in the last paragraph of this section, is compiled in the United States Code as Tit. 43, secs. 1411 to 1418.

Amendments

The 1967 amendment deleted the last sentence of the first paragraph, which read "The amount of state land relinquished

under this section in any one year shall not exceed six sections"; and substituted the last sentence of the third paragraph for "The land received from the United States, under this provision, must be located in the same county as the relinquished land, and the present lessees or permittees must be recognized for the continuance of their use of the land on such terms as may be required by the respective agencies."

The 1973 amendment numbered the subsections; deleted from subsection (3) a first sentence validating certain agreements with the United States; and made minor changes in style and phraseology.

81-305, 81-306. Repealed.

Repeal

Sections 81-305, 81-306 (Sec. 1, Ch. 168, L. 1937; Sec. 1, Ch. 61, L. 1955), relating to exchange of lands with the state water

conservation board and the United States, were repealed by Sec. 116, Ch. 428, Laws 1973.

CHAPTER 4—LEASING OF AGRICULTURAL LANDS—GRAZING LANDS AND CITY AND TOWN LOTS

Section

- 81-402. Lease of state lands—crop share rental basis used.
- 81-404. Appraisal of grazing lands.
- 81-405. Renewal leases—preference right of lessee.
- 81-406. [Transferred.]
- 81-407. Who may lease—how much and for what length of time.
- 81-408. Lease expiration dates.
- 81-412. Rental, when due—cancellation for nonpayment.
- 81-413. Land to be leased in compact bodies—inspections to determine best use of land.
- 81-414. Change in terms of lease.
- 81-415. Conditions of leases—cancellation for violation of rules.
- 81-416. Form of lease—bond.
- 81-418. Liens on crops and improvements.
- 81-419. Assignment of leases—preferences—fee.
- 81-421. Compensation for improvements.

- 81-421.1. Arbitrators to fix value of improvements—appeal.
- 81-422. Cancellation of leases.
- 81-423. Leasing regulations.
- 81-424. Lease of state land to United States for military purposes authorized.
- 81-426. Filing with board required.
- 81-428. Proof of termination of lease or pledge to be filed.
- 81-433. Formula for fixing annual rental.
- 81-436. Deposit required with bid for lease—retention or return—forfeiture.

81-401. Policy of state as to appraisal and leasing state land.

References

State ex rel. Thompson v. Babcock, 147
M 46, 409 P 2d 808.

81-402. (1805.20) Lease of state lands—crop share rental basis used.

(1) Under the general direction and control of the board of land commissioners, the department shall lease all agricultural and grazing lands and all town and city lots open to leasing upon proper application. As to agricultural lands, all leases shall be continued or made upon a crop share rental basis of not less than one-fourth ($\frac{1}{4}$) of the annual crops to the state, or the usual landlord's share prevailing in the district, whichever is greater. The board may, however, approve special crop share rentals of less than one-fourth ($\frac{1}{4}$) for high production cost crops such as, but not limited to, potatoes and sugar beets. The board may not delegate the authority to approve such special crop share rentals.

(2) In unusual cases the department may authorize a lease upon other basis than crop share, but in these unusual cases the rental shall at least equal the value of the usual landlord's share prevailing in the district, and the department shall set forth in the records the unusual conditions of the case and the rental to be charged.

(3) The rental rate for leasing all state grazing lands shall be based upon the appraised animal-unit-month carrying capacity of the land as provided in section 81-433. As to town and city lots owned by the state, the fair rental value thereof shall be determined from time to time by the department with the approval of the board and a record made thereof, and such town or city property may be leased at its current appraised rental value for terms not to exceed twenty-five (25) years.

(4) All leases of agricultural or grazing lands, or town or city lots, shall be upon condition that the board may, in its discretion, offer the land for sale at any regular public sale of state lands held in the county where the land is situated, upon the same terms, and in the same manner as land not under lease.

History: En. Sec. 20, Ch. 60, L. 1927; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 134 and once by Ch. 135.

Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment substituted references to the department for references to the commissioner; substituted "by" for

"under the direction of" in the second sentence of subsection (3); and made minor changes in style and phraseology.

Chapter 134, Laws of 1974, added the third and fourth sentences to subsection (1).

Chapter 135, Laws of 1974, increased the maximum lease term in subsection (3) from 5 to 25 years.

References

State ex rel. Thompson v. Babcock, 147 M 46, 409 P 2d 808.

81-404. Appraisal of grazing lands. (1) The department shall appraise the grazing lands owned by the state as to their animal-unit-month carrying capacity, and make and preserve records thereof in its office, and from time to time re-examine these lands as to their animal-unit-month carrying capacity so as to keep the records thereof in its office reasonably accurate.

(2) In appraising these grazing lands the following factors shall be taken into consideration:

(a) Inventory of the forage resources—kind, amount, and location of vegetation.

(b) Accessibility and usability of this forage resource as influenced by topography, availability of stock water, and season of usability.

(c) Condition of soils—the erosion situation.

(d) Other and related resources—such as timber, game animals, need for watershed protection.

(e) Record of needed improvements and facilities—fuel and stock water, revegetation, rodent control, trails, fences, and the like.

(f) Pertinent facts and figures submitted by stockmen living in the area and directors of state grazing districts including the land or in its vicinity.

(g) Carrying capacity set for similar land in a state grazing district in which the land is situated.

History: En. Sec. 4, Ch. 207, L. 1945; amd. Sec. 11, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted references to the department for references to the commissioner; substituted "appraise"

for "cause the grazing land owned by the state to be appraised" near the beginning of subsection (1); substituted "re-examine" for "cause said lands to be re-examined" near the end of subsection (1); and made minor changes in style and phraseology.

81-405. (1805.21) Renewal leases—preference right of lessee. (1) A lessee of state land classed as agricultural, grazing, town lot or city lot, who has paid all rentals due from him to the state, and who has not violated the terms of his lease, is entitled to have his lease renewed for a five (5) or ten (10) year period at the rental rate provided by law for the renewal period, and subject to any other conditions at the time of the renewal imposed by law as terms of the lease at any time within thirty (30) days prior to its expiration if no other applications for lease of the land have been received thirty (30) days prior to the expiration of his lease. If other applications have been received, the holder of the lease has the preference right to lease the land covered by his former lease by meeting the highest bid made by any other applicant. Applica-

tions for lease of lands in this section shall be given preference in the order of their receipt at the office of the department.

(2) Notwithstanding the foregoing provisions, the board may withdraw any agricultural or grazing land from further leasing for such period as the board determines to be in the best interest of the state. Bids for leases and applications for renewals of leases of state agricultural lands or state grazing lands shall be in writing and sealed and shall be submitted to the board at the office of the department.

History: En. Sec. 21, Ch. 60, L. 1927; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec. 3, Ch. 260, L. 1963; amd. Sec. 12, Ch. 428, L. 1973.

"shall withdraw" near the beginning of subsection (2); substituted "department" for "commissioner" at the end of subsection (2); and made minor changes in style and phraseology.

Amendments

The 1973 amendment numbered the subsections; substituted "may withdraw" for

References

State ex rel. Thompson v. Babcock, 147 M 46, 409 P 2d 808.

81-406. [Transferred.]

Compiler's Notes

Section 13 of Ch. 428, Laws 1973, redesignated this section as sec. 81-421.1.

81-407. (1805.23) Who may lease—how much and for what length of time. No person may lease state lands, except one who is the head of a family, unless he has attained the age of eighteen (18) years. Any such person and any association, company, or corporation authorized to hold lands under lease may lease state lands, and may hold more than one (1) lease to state lands, and there may be included under one (1) lease tracts of lands embracing more than one (1) section. No lease to agricultural or grazing lands may be for a period other than five (5) or ten (10) years. Leases for city and town lots may not exceed twenty-five (25) years. When a lease expires or is canceled the department shall immediately notify the holder of the lease and all persons who have expressed an interest in leasing the land during, or immediately preceding, the term of the expired or canceled lease. If the legislature raises the rentals for state grazing lands during the term of any leases of grazing land which are not issued as a result of competitive bidding, the lessee shall, for the years after the increase becomes effective, pay the increased rental, and the terms of grazing leases shall so provide.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974.

section embodying the changes made by both amendments.

Amendments

The 1971 amendment reduced the age specified at the end of the first sentence from 21 to 19 years.

Chapter 94, Laws of 1973, reduced the age specified at the end of the first sentence from nineteen to eighteen years.

Chapter 428, Laws of 1973, inserted "and may hold more than one (1) lease to state lands" in the middle of the second sentence; deleted a sentence restricting the duration of leases; substituted "de-

Compiler's Notes

This section was amended twice in 1973, once by Ch. 94 and once by Ch. 428. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite

partment" for "commissioner" near the beginning of the present fourth sentence; and made minor changes in phraseology and style.

The 1974 amendment increased the maximum lease term for city and town lots from 5 to 25 years.

81-408. (1805.24) Lease expiration dates. All leases for agricultural lands, grazing lands hereafter issued no matter on what date issued, shall expire on February 28 within ten (10) years from the date on which the lease becomes effective.

History: En. Sec. 24, Ch. 60, L. 1927; amd. Sec. 3, Ch. 65, L. 1939; amd. Sec. 4, Ch. 135, L. 1974.

Amendments

The 1974 amendment deleted "and town and city lots" after "grazing lands."

81-412. (1805.26) Rental, when due—cancellation for nonpayment. The rental for the first year of the lease shall be paid at or before the time of the execution of the lease; however, in the case of leases which take effect on and after October 1 and before the expiration of the coming February, both the rental for the fractional year and for the next full year beginning March 1, shall be paid and collected at the time of issuing the lease. If the United States is the lessee of state lands for grazing purposes, the rental shall be payable at the end of each year of the lease. The rental for each succeeding year on leases hereafter issued, with the exception of leases wherein the United States is the lessee, is due and payable before March 1, and if not paid by April 1 the lease is canceled. The department shall notify the lessee by letter addressed to the post-office address given in the lease of the cancellation, and the land is then open for lease to other applicants.

History: En. Sec. 26, Ch. 60, L. 1927; amd. Sec. 1, Ch. 197, L. 1943; amd. Sec. 2, Ch. 22, L. 1971; amd. Sec. 15, Ch. 428, L. 1973.

Amendments

The 1971 amendment eliminated the fee of \$2.50 for issuing the lease, and granted general authority for the commissioner of lands and investments to establish the fee with the approval of the board of land commissioners.

The 1973 amendment deleted "and such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners for issuing the lease" following "rental for the first year of the

lease" near the beginning of the first sentence; deleted "to the commissioner of state lands and investments" following "due and payable" in the third sentence; substituted "before March 1" for "on December 15 next preceding the rental year to which the rental applies" in the third sentence; substituted "by April 1" for "on or before February 1 next following" near the end of the third sentence; substituted "is canceled" for "this nonpayment shall have the effect of canceling the lease from and after February 28 of that year" at the end of the third sentence; substituted "department" for "commissioner" in the last sentence; and made minor changes in style and phraseology.

81-413. (1805.27) Land to be leased in compact bodies—inspections to determine best use of land. All lands shall be leased in as compact bodies as possible, and care shall be taken not to separate parts of any section from the section lines or public highways or from any available water supply, or in a form that will make it more difficult to lease the remaining state lands in the section in which they are located. If there are applications or bids for renting certain land for grazing purposes and also applications or bids for renting the same land for agricultural purposes, an inspection of the land shall be made by the department at the

earliest practical opportunity and a determination made, based on its findings, of the highest and best use which can be made of the land or portions thereof. Any lease of the land subsequent to the applications or bids shall be such as to return to the state revenue commensurate with the highest and best use.

History: En. Sec. 27, Ch. 60, L. 1927; amd. Sec. 3, Ch. 257, L. 1965; amd. Sec. 16, Ch. 428, L. 1973.

ences to the department for references to the commissioner and his field agent; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted refer-

81-414. (1805.28) Change in terms of lease. When land is leased for grazing purposes, and the lessee desires to cultivate any part of the land, he shall, before doing any such cultivation, make application to the department stating how much land he desires to cultivate and showing the location in the section of the land, and agree that for the remainder of the term of the lease the annual rental shall be at the rate of the original lease until such time as the first crop is harvested from the cultivated portion of the lease. At the time of the first harvest, the lease shall be at the original rate for that portion remaining as grazing land plus the crop share rental for that portion cultivated. If any person cultivates lands leased for grazing purposes without first securing the right to do so under this section, the department shall either cancel the lease, subject to the appeal procedure provided in section 81-422, or require the lessee to pay twice the regular agricultural rental on the land so cultivated in addition to the grazing rental. The provisions of this section shall be incorporated in every lease.

History: En. Sec. 28, Ch. 60, L. 1927; amd. Sec. 9, Ch. 207, L. 1945; amd. Sec. 1, Ch. 120, L. 1963; amd. Sec. 2, Ch. 27, L. 1971; amd. Sec. 17, Ch. 428, L. 1973.

Amendments

The 1971 amendment inserted "by the commissioner subject to the appeal procedure provided in section 81-422, R. C. M. 1947" in the third sentence.

The 1973 amendment substituted references to the department for references to the commissioner; deleted "send his lease

to the commissioner to have the necessary changes made therein" following "location in the section of the land" in the first sentence; substituted "the department shall either cancel the lease" for "the lease shall be subject to cancellation by the commissioner" in the third sentence; substituted "require the lessee to pay" for "the lessee shall be liable for" near the end of the third sentence; deleted "thereof as may be decided by the board" from the end of the third sentence; and made minor changes in style and phraseology.

81-415. Conditions of leases—cancellation for violation of rules. (1) It shall be a condition of all leases of agricultural or grazing state lands, (a) that, in the case of agricultural lands, the lessee shall observe the ordinary rules for good management of agricultural lands and shall handle the leased land with the view of maintaining its productivity and minimizing wind and soil erosion and noxious weeds, and planting crops with a view of securing the greatest yields of good quality, and (b) that, in the case of grazing lands, the lessee shall observe the ordinary rules for good range management and shall manipulate the numbers, class, distribution, and season of the range use and the handling, feeding, breeding, and marketing of grazing livestock with a view of securing the production of the maximum of livestock and livestock products, con-

sistent with the conservation of the land resources and the perpetuation of its productivity, and to these ends the state land lease may not be abused by overgrazing.

(2) For the gross violation of any of these rules, the lease involved shall be canceled by the department, subject to the appeal procedure provided in section 81-422.

History: En. Sec. 10, Ch. 207, L. 1945; amd. Sec. 4, Ch. 254, L. 1947; amd. Sec. 3, Ch. 27, L. 1971; amd. Sec. 18, Ch. 428, L. 1973.

Amendments

The 1971 amendment, in the second paragraph, provided for mandatory cancellation by the commissioner subject to ap-

peal to the board, rather than discretionary cancellation by the board on recommendation by the commissioner and after notice and opportunity for hearing.

The 1973 amendment numbered the subsections; substituted the reference to the department for a reference to the commissioner in subsection (2); and made minor changes in style and phraseology

81-416. (1805.29) Form of lease—bond. The general form of lease to state lands shall be prescribed by the board, and no changes in the form for these leases may be made without the approval of the board. All leases shall be issued in duplicate, one (1) copy shall be mailed to the lessee, and one (1) copy shall be preserved by the department. Unless the board decides otherwise, these leases shall be issued without bonds, but the board may require a bond and prescribe the form and conditions thereof whenever it considers it necessary.

History: En. Sec. 29, Ch. 60, L. 1927; amd. Sec. 19, Ch. 428, L. 1973.

reference to the department for a reference to the commissioner; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted the

81-418. (1805.31) Liens on crops and improvements. The state has a lien upon all crops growing upon any of its lands, and upon the crops after they have been separated from the lands for any rentals and penalties due or delinquent under the lease on the lands, or becoming due during the calendar year in which the crops are harvested, for any year or part of a year that the land has been held or used by the lessee. This lien applies to all buildings, structures, fences, and all other improvements, and is prior and superior to all other liens, except threshermen's liens and seed liens specified in sections 45-701 and 45-801, which have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due and other charges as evidenced by the original loan-contract, and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated. Any person acquiring any of these crops or improvements takes them subject to this lien. The department or the sheriff of the county in which the land is located may demand of the lessee payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand, or the department, may seize and sell, either at a private or public sale, upon giving notice for not less than three (3) days of the sale, sufficient of those crops or improvements, or of both, to pay the amounts due the state together with costs and expenses of seizure and sale. These provisions relating to liens on crops and improve-

ments shall be embodied in all leases for agricultural and grazing lands and for town, city, or other lots.

History: En. Sec. 31, Ch. 60, L. 1927; amd. Sec. 20, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted the final clause of the second sentence, beginning "but only for the aggregate amount," for "as specified in section 52-301"; deleted "or his deputy" following "sheriff of

the county in which the land is located" in the fourth sentence; deleted "or his agent" following "may demand of the lessee" in the fourth sentence; deleted "any personal representative of" before "the department, may seize," in the fourth sentence; and made minor changes in style and phraseology.

81-419. (1805.32) Assignment of leases — preferences — fee. Leases to state lands may be assigned on blanks prescribed by the department, but no assignment is binding on the state unless the assignment is filed with the department, approved by it and payment made of the assignment fee under section 81-108. Preference shall always be given to the applicant who wants the land for his own individual use, so that the full advantage coming from the leasing and use of the lands may reach those who actually till the soil, and so that they are not compelled to pay a higher rental than that due the state. If a lessee subleases state lands on terms less advantageous to the sublessee than the terms given by the state, or subleases state lands without filing a copy of the sublease with the department and without receiving its approval, the department shall cancel the lease, subject to the appeal procedure provided in section 81-422.

History: En. Sec. 32, Ch. 60, L. 1927; amd. Sec. 1, Ch. 14, L. 1937; amd. Sec. 12, Ch. 207, L. 1945; amd. Sec. 18, Ch. 121, L. 1965; amd. Sec. 3, Ch. 22, L. 1971; amd. Sec. 4, Ch. 27, L. 1971; amd. Sec. 21, Ch. 428, L. 1973.

Amendments

Chapter 22, Laws of 1971, deleted the assignment fee of \$3.00 and the sublease fee of \$2.00 and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

Chapter 27, Laws of 1971, combined the

former last two sentences into the present last sentence and provided for mandatory cancellation by the commissioner, subject to appeal, rather than discretionary cancellation by the board after hearing. For prior version, see parent volume.

The 1973 amendment substituted references to the department for references to the state board of land commissioners; substituted "the assignment fee under section 81-108" for "such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners" at the end of the first sentence; and made minor changes in style and phraseology.

81-421. (1805.34) Compensation for improvements. (1) A lessee of state lands may place upon the lands a reasonable amount of improvements directly related to conservation of the land or necessary for proper utilization of it. These improvements may consist of fences, cultivation, and improvement of the land itself, irrigation ditches, sheds, wells, and reservoirs, and similar improvements. When another person becomes the lessee of such lands, he shall pay to the former lessee the reasonable value of these improvements at the time the new lessee takes possession. However, if any of the improvements consists of breaking (meaning the original plowing of the land), and one (1) year's crops have been raised on the land after the breaking, the compensation for the breaking may not exceed two dollars and fifty cents (\$2.50) per acre, and if two

(2) or more crops have been raised on the land after the breaking, the breaking shall not be considered as an improvement to the land. If the former lessee and the new lessee are unable to agree on the reasonable value of the improvements, the value shall be ascertained and fixed as provided in section 81-421.1.

(2) In determining the value of these improvements, consideration shall be given to their original cost, their present condition, their suitability for the uses ordinarily made of the lands on which they are located, and to the general state of cultivation of the land, its productive capacity as affected by former use, and its condition with reference to the infestation of noxious weeds. Consideration shall be given to all actual improvements and to all known effects that the use and occupancy of the land have had upon its productive capacity and desirableness for the new lessee. The former lessee may, however, remove the movable improvements on the land and dispose of them to parties other than the lessee; if he fails to remove the improvements from the land within sixty (60) days from the date of the expiration of his lease, all of the improvements become the property of the state, unless the department for good cause grants additional time for their removal. Before a lease is issued to the new lessee he shall show that he has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under section 81-421.1, or that he has offered to pay the value of the improvements as so fixed and determined, or that the former lessee elects to remove the improvements.

History: En. Sec. 34, Ch. 60, L. 1927; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "section 81-421.1" for "this act" at the end of subsection (1);

substituted "department" for "commissioner" near the end of the third sentence; changed the statutory reference near the end of the last sentence in subsection (2) from section 81-406 to section 81-421.1; and made numerous minor changes in style and phraseology.

81-421.1. (1805.22) Arbitrators to fix value of improvements—appeal.

If the owner of any improvements on state lands of the type authorized by law at the time they were placed thereon desires to sell these improvements to the new lessee, and they are unable to agree on the value thereof, the value shall be ascertained and fixed by three (3) arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee and the third by the two (2) arbitrators so appointed. The reasonable compensation that the arbitrators may fix shall be paid in equal shares by the owner of the improvements and the new lessee. The value of the improvements so ascertained and fixed is binding on both parties, however, if either party is dissatisfied with the valuation so fixed, he may within ten (10) days appeal from their decision to the department which shall examine the improvements, and its decision shall be final. The department shall charge and collect the actual cost of the re-examination to the owner and the new lessee in such proportion as in its judgment justice may demand. The value of the improvements shall be ascertained and fixed as section 81-421 provides.

History: En. Sec. 22, Ch. 60, L. 1927; amd. Sec. 4, Ch. 260, L. 1963; Sec. 81-406, R. C. M. 1947; redes. 81-421.1 and amd. by Sec. 13, Ch. 428, L. 1973.

Amendments

The 1973 amendment renumbered this section; substituted references to the department for references to the commission-

er; deleted "thereupon cause the chief field agent or assistant field agent to" before "examine the improvements" near the end of the second sentence; substituted "section 81-421 provides" for "hereinafter and in this act provided" at the end of the section; and made minor changes in style and phraseology.

81-422. (1805.36) Cancellation of leases. (1) The department may cancel a lease for any of the following causes: fraud, misrepresentation, or concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; using the land for other purposes than those authorized by the lease; and for any other cause which in the judgment of the department makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interests of the state. Such cancellation does not entitle the lessee to any refund of rentals paid or exemption from the payment of any rentals, penalties, or other compensation due the state.

(2) When the department cancels a lease pursuant to this section or sections 81-414, 81-415, or 81-419, it shall immediately notify the lessee by certified mail of the cancellation and the reasons therefor. The date of cancellation is fifteen (15) days from the date the notice is received by the lessee. The lessee has fifteen (15) days after the receipt of the notice to file with the department a notice of appeal for a hearing before the board. If notice of appeal is filed, the lease remains in effect until the decision of the board. Within ten (10) days after notice of appeal has been filed, the department shall set the time and place of hearing and shall so notify the lessee. The board may, after ten (10) days' notice to the lessee, change the time and place of hearing.

(3) Under rules it adopts, the board shall conduct an open hearing to determine whether the lease should be reinstated. The burden of proof is on the lessee to show why the lease should not be canceled. If the lease is reinstated, all of the lessee's rights and privileges thereunder shall be preserved; if not, the land shall be open for releasing as provided by law. If the board finds that the terms of the lease have been violated, but in its judgment the violation is not serious enough to warrant cancellation, it may reinstate the lease and assess a penalty up to three (3) times the annual rental against the lessee.

History: En. Sec. 36, Ch. 60, L. 1927; amd. Sec. 5, Ch. 27, L. 1971; amd. Sec. 23, Ch. 428, L. 1973.

Amendments

The 1971 amendment substituted "commissioner" for "board" in two places; added the last two paragraphs on the procedure for cancellation by the commissioner and appeal to the board; and made a minor change in phraseology.

The 1973 amendment numbered the subsections; substituted references to the department for references to the commission-

er; inserted "for a hearing before the board" at the end of the third sentence in subsection (2); deleted from subsection (3) a second sentence reading "All testimony shall be given under oath and reduced to writing"; and made minor changes in style and phraseology.

Effective Date

Section 6 of Ch. 27, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 16, 1971.

81-422.1. Repealed.**Repeal**

Section 81-422.1 (Sec. 1, Ch. 27, L. 1971), relating to the procedure for terminating

leases, was repealed by Sec. 116, Ch. 428, Laws 1973.

81-423. (1805.37) Leasing regulations. The board may prescribe rules and regulations relating to the leasing of state lands as it considers necessary in order that the use and proceeds of these lands may contribute in the highest attainable measure to the purposes for which they are granted to the state.

History: En. Sec. 37, Ch. 60, L. 1927; amd. Sec. 24, Ch. 428, L. 1973.

reference to the board for a reference to the state board of land commissioners; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted the

81-424. Lease of state land to United States for military purposes authorized. The board, when it considers it in the public interest, may lease to the United States, for military purposes, any state land, whether such land was received by the state through federal land grants, or whether such land consists of so-called "mortgage lands," on such terms and conditions as it considers necessary to promote the public welfare and protect the interests of the state; rental shall be payable at the end of each year of the lease.

History: En. Sec. 1, Ch. 122, L. 1943; amd. Sec. 25, Ch. 428, L. 1973.

standing any inconsistent provision of law, general, special or local" from the beginning of the section; and made numerous changes in style and phraseology.

Amendments

The 1973 amendment deleted "Notwith-

81-426. Filing with board required. The pledgee of such lease or the mortgagee of such leasehold interest shall, within thirty (30) days after receipt of the pledge agreement or mortgage, file it, or a certified copy thereof, with the department.

History: En. Sec. 2, Ch. 52, L. 1947; amd. Sec. 21, Ch. 121, L. 1965; amd. Sec. 4, Ch. 22, L. 1971; amd. Sec. 26, Ch. 428, L. 1973.

Amendments

The 1971 amendment deleted the filing fee of \$2.00, and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

The 1973 amendment substituted "the department" for "the state board of land commissioners" at the end of the section; deleted "and shall pay to said board such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners for the filing thereof" from the end of the section; and made minor changes in phraseology.

81-428. Proof of termination of lease or pledge to be filed. The lessee of any grazing or agricultural lease of or leasehold interest in state lands which is pledged or mortgaged as provided in sections 81-425 through 81-431 shall, within thirty (30) days after payment of the indebtedness secured thereby, or within thirty (30) days after the pledge agreement is terminated or the leasehold interest is released from the mortgage, file with the department proof of that fact.

History: En. Sec. 4, Ch. 52, L. 1947; amd. Sec. 20, Ch. 121, L. 1965; amd. Sec. 5, Ch. 22, L. 1971; amd. Sec. 27, Ch. 428, L. 1973.

Amendments

The 1971 amendment deleted the filing fee of \$2.00, and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

The 1973 amendment inserted the statutory reference to sections 81-425 through 81-431; substituted "department" for "state board of land commissioners"; deleted "and pay to said board such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners for said filing" from the end of the section; and made minor changes in style and phraseology.

81-433. Formula for fixing annual rental. (1) In this section:

(a) "Animal unit" means one (1) cow, one (1) horse, five (5) sheep, or five (5) goats.

(b) "Animal-unit-month carrying capacity" means that amount of natural feed necessary for the complete subsistence of one (1) animal unit for one (1) month.

(2) The board shall establish the per annum rental rate per section of all grazing lands which are the property of the state upon the animal-unit-month basis as provided in this section.

(3) In fixing the minimum annual rental per section, the following formula shall be used:

The base rental shall be computed by multiplying fifty cents (\$.50) plus three (3) times the average price per pound of beef cattle on the farm in Montana for the previous year times the animal-unit-month carrying capacity of the land.

(a) to (c). * * * [Same as parent volume.]

(4) The carrying capacity of the land, to be used in the above formula, shall be in accordance with the determinations of the department made under section 81-404.

(5) The average price per pound of beef cattle on the farm in Montana shall be taken from statistics published by the United States department of agriculture current at the time of computation of the rental, or from other reliable sources current at such time.

History: En. Sec. 2, Ch. 190, L. 1949; amd. Sec. 1, Ch. 229, L. 1951; amd. Sec. 1, Ch. 284, L. 1959; amd. Sec. 6, Ch. 260, L. 1963; amd. Sec. 1, Ch. 97, L. 1973; amd. Sec. 28, Ch. 428, L. 1973.

Amendments

Chapter 97, Laws of 1973, increased the base rental from 32 cents plus twice the price of beef to 50 cents plus three times the price of beef.

Chapter 428, Laws of 1973, numbered the subsections; lettered the subdivisions in subsection (1); substituted "department" for "commissioner of state lands and investments" near the end of subsection (4); deleted "the bureau of agricultural economics of" before "the United States department of agriculture" in subsection (5); and made minor changes in style and phraseology.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 97 and once by Ch. 428. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

81-436. Deposit required with bid for lease—retention or return—forfeiture. A person bidding for the lease of state lands shall deposit with the department, as evidence of good faith, a certified check, cashier's check, or money order in an amount equal to twenty per cent (20%) of the annual

rental bid in the case of grazing land, and an amount equal to one dollar (\$1) per acre for each acre of agricultural land contained in the lease in the case of agricultural land on which the bid is made on a crop share basis. The department shall retain the deposit of the successful bidder and apply it on the rental for the first year of the lease only, and return any balance of the deposit at the end of the first year to the successful bidder, and return the deposits of the unsuccessful bidders. If the successful bidder fails to execute the lease for any reason, his deposit shall be forfeited and deposited by the department to the credit of the proper interest and income account in the federal and private revenue fund.

History: En. Sec. 1, Ch. 185, L. 1963; amd. Sec. 29, Ch. 428, L. 1973; amd. Sec. 1, Ch. 133, L. 1974.

the commissioner; and made minor changes in style and phraseology.

The 1974 amendment reduced the deposit required for leasing grazing land from an amount equal to the annual rental to 20% of the annual rental.

Amendments

The 1973 amendment substituted references to the department for references to

CHAPTER 5—COAL MINING LEASES AND PERMITS

Section

- 81-501. Coal mining leases.
- 81-502. Maximum term of lease—form.
- 81-506. Improvements of former lessee.
- 81-508. Report and payment of royalty.
- 81-510. Disposition of royalties and other receipts.

81-501. (1805.38) Coal mining leases. (1) The state board of land commissioners may lease in such manner as it considers in the best interests of the state any state lands to which the title is vested in the state and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling, and disposing of the coal therein, upon the terms and conditions herein stated, and subject to such rules and regulations as the board prescribes. This power extends to state lands no matter how acquired, and extends to state lands which have been sold but in which the coal rights are reserved by the state, whether the lands are under certificate of purchase or patents have been issued; in such cases and in all cases where the lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the coal mining lease to protect the rights of the purchaser or lessee.

(2) These coal leases are subject to the condition that the coal must be mined, handled, and marketed in a manner that will prevent as far as possible all waste of coal, and are also subject to the condition that the mining operations shall be carried on in a systematic and orderly manner that will not make subsequent mining operations more difficult or expensive. A violation of any of these conditions is grounds for the forfeiture of the lease, after a hearing before the board.

History: En. Sec. 38, Ch. 60, L. 1927; amd. Sec. 30, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections and made numerous changes in style and phraseology.

81-502. (1805.39) Maximum term of lease—form. No coal mining lease may be issued for more than twenty (20) years, but the board may establish rules for the renewal of a lease at the expiration of the term it considers proper and necessary. The board shall prescribe the form of the lease.

History: En. Sec. 39, Ch. 60, L. 1927; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973.

Amendments

The 1967 amendment increased the maximum term for leases on state lands from 10 to 20 years, and increased the fee from \$2 to \$5.

Chapter 22, Laws of 1971, deleted the fee of \$5.00 for issuing the lease and approving the bond, and granted general authority for the commissioner of lands and investments to prescribe such fee with

the approval of the board of land commissioners.

Chapter 291, Laws of 1971, added the second paragraph.

The 1973 amendment deleted "the fee for issuing the lease and proving the bond hereinafter provided shall be such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners payable to the commissioner" from the end of the first paragraph; deleted a second paragraph giving temporary exchange rights to certain lessees; and made minor changes in style and phraseology.

81-506. (1805.43) Improvements of former lessee. When a coal mining lease is applied for on land where mining operations have been carried on by a former lessee, and there are surface or underground improvements on the land used at the former operations, disposition shall be made of the improvements satisfactory to the board before a new lease is issued. If the owner of such improvement desires to sell the same to the new lessee, then the new lessee shall pay him the reasonable value thereof as far as they are suitable for the new mining operations. If they fail to agree on the value of such improvements, then such value shall be ascertained and fixed as provided in section 81-421.1.

Before a new lease is issued, the applicant shall show to the satisfaction of the board that he has paid the owner for the improvements as agreed on between them, or as fixed by the aforesaid officers, or officer, or that he has tendered payment as so fixed, or that the owner desires to remove his improvements.

History: En. Sec. 43, Ch. 60, L. 1927; amd. Sec. 32, Ch. 428, L. 1973.

Amendments

The 1973 amendment changed the refer-

ence at the end of the first paragraph from section 81-406 to 81-421.1; and made minor changes in style and phraseology.

81-508. (1805.45) Report and payment of royalty. On or before the last day of each month every holder of a producing coal mining lease shall make a report to the department on a form the department prescribes, showing the number of tons mined during the preceding calendar month, the price obtained therefor at the mine, the total amount of all sales, and any additional information required by the department. The report shall be verified by the oath of the lessee and be accompanied by payment of the royalty due the state for the preceding month as shown by the report.

History: En. Sec. 45, Ch. 60, L. 1927; amd. Sec. 33, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "last day of each month" for "fifteenth day of

each calendar month" near the beginning of the section; substituted "every holder of a producing coal mining lease" for "the lessee"; substituted references to the de-

partment for references to the commissioner; and made minor changes in style and phraseology.

81-510. (1805.47) Disposition of royalties and other receipts. The department shall credit fees and penalties collected under coal mining leases to the general fund, and rentals, royalties, and bonuses to the permanent fund arising from the grant to which the land under each particular lease belongs.

History: En. Sec. 47, Ch. 60, L. 1927; amd. Sec. 34, Ch. 428, L. 1973.

Amendments

The 1973 amendment rearranged the language; substituted "department" for "commissioner"; inserted a new clause providing for credits to the general fund; sub-

stituted "the permanent fund arising from the grant to which the land under each particular lease belongs" at the end of the section for "the same funds that such receipts under oil and gas leases on such lands would be credited under the provisions of this act"; and made other minor changes.

CHAPTER 6—PROSPECTING PERMITS AND MINING LEASES

Section

- 81-601. Definitions.
- 81-601.1. Prospecting permits.
- 81-602. Empowering board to lease, etc.
- 81-603. Provisions of leases.
- 81-604. Royalties—pooling agreements and unit plans of operation.
- 81-605. Quantity of lands.
- 81-606. Applications.
- 81-607. Bonds to state.
- 81-608. Bonds to protect lessees, contractees, etc.
- 81-611. Examination of lands.
- 81-612. Failure of title.
- 81-613. Assignment of leases or permits.
- 81-614. [Transferred.]
- 81-615. [Transferred.]
- 81-616. Notice to lessees.

81-601. Definitions. In this chapter:

(1) "Metalliferous minerals" mean gold, silver, lead, zinc, copper, platinum, iron, and all other metallic minerals.

(2) "Gems" mean sapphires, rubies, and other stones commonly known as "precious stones" or "semiprecious stones," but do not mean stones or other earth materials commonly used in building or construction work.

(3) "Mining" means the carrying on of operations of any kind for the purpose of extracting from the earth ore and other earth material containing metalliferous minerals or gems, and includes operations of any kind for the extraction from ores and other earth material of metalliferous minerals or gems.

(4) "Mining lease" means a lease issued by the state board of land commissioners for the prospecting for or mining of metalliferous minerals or gems. The term "mining lessee" means the holder of a mining lease whether the holder is the original lessee under the lease, or holds the lease as successor of the original lessee.

(5) "Returns" mean the net amount received by the shipper from products of mining operations, after deducting transportation costs and smelting charges and deductions, and other treatment costs, not including as a deduction any cost of producing or treating at the mine.

(6) "Full market value" means the highest net value of products of mining operations in United States markets, less cost of transportation and refining, not including as a deduction any cost of producing or treating at the mine.

History: En. Sec. 1, Ch. 148, L. 1937; amd. Sec. 35, Ch. 428, L. 1973.

bers for letters in designating the subsections; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted num-

81-601.1. Prospecting permits. Prospecting permits without lease may be issued by the board upon the payment of the issuance fee under section 81-108. The permittee shall also pay an annual fee established by the department and approved by the board at the end of each year during the life of the permit. A permit shall provide for due diligence in the work of prospecting during the life of the permit. A permit shall be limited to prospecting for metalliferous minerals or gems and no permittee may remove from any lands or mineral rights covered by the permit any metalliferous minerals or gems except such as are necessary for the proper testing and sampling of the lands or mineral rights, and except as are permitted by the board. During the life of any permit the permittee may apply for a lease of the lands or mineral rights covered by the permit, and if a lease is granted it shall be in the form and subject to all the terms and conditions specified in this chapter, as in the case of a mining lease issued under this chapter. The permittee has the preference right to a lease, upon such terms as the board considers just, subject to this chapter, and in any event the permittee has preference without competitive bidding, and upon the most favorable terms permitted under this chapter, to forty (40) contiguous acres. If some other person makes a better bid for a mining lease upon the land covered by the permit, and if the board awards a mining lease to a better bidder, the board shall also require such mining lessee to pay to the permittee, prior to the issuance of the lease, the full value of all the work the permittee has performed upon the land under his permit in connection with his prospecting and exploration work, and the permittee may remove from the land, within thirty (30) days from the date the board gives the permittee notice of the issuance of the mining lease, or within such further time as the board, upon good cause shown, allows, any machinery, equipment, improvements, and other property placed thereon by him.

History: En. Sec. 15, Ch. 148, L. 1937; amd. Sec. 9, Ch. 22, L. 1971; Sec. 81-615, R. C. M. 1947; redes. 81-601.1 and amd. by Sec. 47, Ch. 428, L. 1973.

permits without lease, and granted general authority for the commissioner of lands and investments to prescribe such fees with the approval of the board of land commissioners.

Amendments

The 1971 amendment eliminated statutory fees for issuance of prospecting

The 1973 amendment renumbered this section; deleted a first sentence saving permits and leases outstanding in 1937;

substituted references to the department for references to the commissioner of state lands and investments; substituted "the issuance fee under section 81-108" at the end of the first sentence for "such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners at the time of the issuance of such permits"; substituted "The permittee

shall also pay an annual fee established by the department and approved by the board" for "and such further fees as may be established by the commissioner of state lands and investments with approval of the state board of land commissioners" at the beginning of the second sentence; and made minor changes in style and phraseology.

81-602. Empowering board to lease, etc. The board may, in its discretion, subject to the other provisions of this chapter, lease state lands, including the beds of navigable streams and the beds of navigable bodies of water, and the reserved mineral rights of the state in lands sold or leased by the state, to any person, association, or corporation, for the purpose of prospecting for or mining metalliferous minerals or gems. These leases may be for a period of time determined by the board, subject to limitations contained in the grants by which the state has acquired title to lands or mineral rights so leased.

History: En. Sec. 2, Ch. 148, L. 1937;
amd. Sec. 36, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style and phraseology.

81-603. Provisions of leases. Leases issued under this chapter shall give the lessee, so long as he complies with the terms and conditions of the lease, the exclusive right of possession of the lands or mineral rights leased, subject to any reservations contained in the leases. A lease may contain reasonable provisions for preliminary prospecting periods, and shall contain reasonable requirements for the prosecution of work during the prospecting period (if any), and for the prosecution of mining after the prospecting period. It may provide for the payment of rentals in conjunction with the work requirements, or may prescribe cash rentals as an alternative, or otherwise, as the board considers best. It shall specify the term of the lease, the royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a time limited in the lease, remove property placed upon the leased lands by him, in the event of the termination of the lease by forfeiture or by lapse of time. It may also contain other provisions the board and the lessee agree upon, not inconsistent with this chapter. In short the board in making the leases may exercise business discretion, so long as this chapter is not violated. No mining lessee may, during any preliminary prospecting period contained in any lease, remove any metalliferous minerals or gems from the leased premises, except as are necessary for the proper testing and sampling of the lands or mineral rights, and except as are permitted by the board. The board, by agreement with the permittee or lessee, may, in its discretion and upon such terms as it considers best, amend or modify the terms and conditions within the limitations of this chapter or extend the term of any lease or prospecting permit issued under this chapter, subject to the limitations contained in section 81-602.

History: En. Sec. 3, Ch. 148, L. 1937;
amd. Sec. 1, Ch. 205, L. 1947; amd. Sec.
37, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style, punctuation and phraseology.

81-604. Royalties—pooling agreements and unit plans of operation.

(1) In every mining lease the board shall reserve to the state a royalty which shall, together with other considerations to be paid by the mining lessee, constitute the full market value as ascertained by the board of the leasehold interest conveyed by the lease. This royalty may not be less than five per cent (5%) of the returns from, or of the full market value of, the metalliferous minerals or gems recovered by the lessee from the state lands or reserved mineral rights covered by the lease.

(2) The board may enter into agreements for the pooling of acreage or yardage with others holding the mineral rights in adjoining lands, for unit operation of placer mining and the apportionment of royalties on a cubic yardage or area basis in the case of placer mining deposits lying partly on land in which the state holds the mining rights, and partly on land in which others hold the mining rights. From each cleanup of values under such unit operations in which any yardage or area mined on lands to which the state holds the mineral rights is included, the state is entitled to royalties computed on that proportion of the whole value of recoveries from the cleanup as the yardage or area mined from lands included in the agreement in which the state holds the mining rights, bears to the total yardage or area mined and included in the cleanup. The board may also enter into agreements for the unit operation of such placer mining deposits and the apportionment of royalties upon any other equitable basis the board considers in the best interest of the state. The agreements may not change the percentage of royalties to be paid to the state under the unit operations from the percentage fixed in the lease, or to a smaller percentage than the five per cent (5%) minimum under this section.

History: En. Sec. 4, Ch. 148, L. 1937;
amd. Sec. 2, Ch. 205, L. 1947; amd. Sec.
38, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the sub-

sections; substituted "smaller percentage than the five per cent (5%) minimum under this section" for "less percentage than the minimum provided by law" at the end of subsection (2); and made minor changes in style, phraseology and punctuation.

81-605. Quantity of lands. A mining lease shall cover the quantity of ground the board determines to be reasonable and consistent with the character of the ground, the type of deposit or deposits for which the lands are to be mined, and the character and size of the operation contemplated, necessary, or reasonable in good mining practice, for the profitable recovery of the metalliferous minerals or gems therefrom.

History: En. Sec. 5, Ch. 148, L. 1937;
amd. Sec. 39, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style and phraseology.

81-606. Applications. Application for a mining lease shall be made to the department on a form prescribed by it.

History: En. Sec. 6, Ch. 148, L. 1937; amd. Sec. 40, Ch. 428, L. 1973.

Amendments

The 1971 amendment eliminated provisions for a maximum fee of \$100 and setting forth criteria for the determination thereof, and instead granted general authority for the commissioner of lands

and investments to prescribe such fee with the approval of the board of land commissioners.

The 1973 amendment rewrote this section, which formerly provided for the forms of applications to be prepared by the state board of land commissioners and for a fee to be paid at the time of issuance of a mining lease.

81-607. Bonds to state. The board may, at the time of the execution and delivery of a mining lease, or at any time during the life of the lease, require a mining lessee to file with the department, for the benefit of the state, a bond or bonds conditioned to protect the rights of the state, particularly in the payment to the proper officer of the state of the royalties reserved in the mining lease. The bond or bonds shall be in a form and amount prescribed by the board. The board may at any time require new or additional bonds if, in its discretion, the interests of the state are not adequately protected by the bond or bonds previously filed.

History: En. Sec. 7, Ch. 148, L. 1937; amd. Sec. 41, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "the department" for "the board" in the first sentence; substituted "and amount pre-

scribed by the board" at the end of the second sentence for "and the sufficiency thereof to be subject to the approval of the board"; deleted "with it in connection with any such mining lease" from the end of the last sentence; and made minor changes in style and phraseology.

81-608. Bonds to protect lessees, contractees, etc. If the lands at the time of the issuance of a mining lease have been sold, or are under contract of sale, or have been leased for agricultural, grazing, or other purposes, the board shall provide against the infringement of the rights of the prior purchaser, contractee, or lessee, and among other things may at any time require the mining lessee to file with the department a corporate surety bond in a reasonable amount fixed by the board, conditioned to protect the rights of the prior purchaser, contractee, or lessee. The form of the bond shall be prescribed by the board, and the bond shall run to the state for the benefit of the prior purchaser, contractee, or lessee. New or additional bonds may be required by the board at any time. Suit may be brought upon the bond by any such prior purchaser, contractee, or lessee, for alleged violation of the terms of the bond by the mining lessee, and such suit shall be brought by the claimant in the name of the state for the use and benefit of the claimant, and any recovery upon the bond shall be paid to the claimant.

History: En. Sec. 8, Ch. 148, L. 1937; amd. Sec. 42, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "the

department" for "said board" preceding "a corporate surety bond" near the end of the first sentence; and made minor changes in style and phraseology.

81-611. Examination of lands. Before the board leases any lands for the mining of metalliferous metals or gems, the department shall investigate the character of the lands and the nature and possible extent of the mineral deposits therein, for the purpose of determining whether those

lands are of such a character as to warrant the issuance of a mining lease thereon, and for the purpose of determining the amount of royalty and other rentals or considerations for which the lands should be leased for mining purposes under this chapter. Upon the filing of an application for a mining lease the board may, if the lands covered by the application have not been examined by the department, require the applicant for the lease to deposit with the department an amount of money, not exceeding five hundred dollars (\$500) in any one case, which, in its judgment, will cover the cost of a special examination, to enable the board to pass upon the application in accordance with this chapter. Such deposit shall be used to reimburse the state for the actual cost of the examination, and any portion of the deposit not required for such reimbursement shall, upon the approval or rejection of the application, be repaid to the applicant by the department. The department shall make and preserve complete records of all such examinations.

History: En. Sec. 11, Ch. 148, L. 1937;
amd. Sec. 43, Ch. 428, L. 1973.

ences to the department for references to the board; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted refer-

81-612. Failure of title. In issuing mining leases, the board and the state have leased only such right, title, and interest as the state has in the lands, metalliferous minerals or gems therein contained. Neither the state, the board, nor any representative, agent, or employee of the state or the board, are under any liability for the failure of the title of the state, in whole or in part, to the lands, metalliferous minerals, or gems covered by the lease.

History: En. Sec. 12, Ch. 148, L. 1937;
amd. Sec. 44, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style and phraseology.

81-613. Assignment of leases or permits. In case of the assignment of a mining lease or a prospecting permit by the holder thereof, the mining lessee or permittee executing the assignment is not relieved of any responsibility for operations under the lease or prospecting permit until the financial and moral responsibility of the assignee has been approved by the board, nor until there is deposited with the department:

(a) The assignment or an executed copy thereof;

(b) An instrument executed by the sureties upon any bonds then held by the board in connection with the mining lease or permit and then in force, consenting to the assignment and containing the agreement of the sureties to be bound by the bonds under the assignment, or new bonds conforming to all the requirements of section 81-607; and

(c) A fee prescribed under section 81-108.

History: En. Sec. 13, Ch. 148, L. 1937;
amd. Sec. 8, Ch. 22, L. 1971; amd. Sec. 45,
Ch. 428, L. 1973.

general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

Amendments

The 1971 amendment deleted from subdivision (c) the fee of \$2.50, and granted

The 1973 amendment substituted "department" for "board" at the end of the preliminary paragraph; rewrote subdivi-

sion (c), which formerly read "Such fee as may be prescribed by the commissioner of the state lands and investments with the

approval of the state board of land commissioners"; and made minor changes in style and phraseology.

81-614. [Transferred.]

Compiler's Notes

Section 46 of Ch. 428, Laws 1973, redesignated this section as sec. 81-2305.

81-615. [Transferred.]

Compiler's Notes

Section 47 of Ch. 428, Laws 1973, redesignated this section as sec. 81-601.1.

81-616. Notice to lessees. Upon the approval of an application for a prospecting permit or a mining lease under this chapter, the department shall promptly give written notice, by ordinary mail, to the lessee or permittee, and to any holder of an agricultural or grazing lease embracing the same land, or to any holder of a certificate of purchase or patent embracing the same land. The notice shall be addressed to the permittee, mining lessee, agricultural or grazing lessee, purchaser or patentee at his last known post-office address.

History: En. Sec. 16, Ch. 148, L. 1937; amd. Sec. 48, Ch. 428, L. 1973.

ning of the first sentence; substituted "lessee or permittee" for "person; association of persons, or corporation to whom such permit or lease shall be so issued" in the middle of the first sentence; deleted "if there be such purchaser or patentee" at the end of the first sentence; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted "approval" for "granting" near the beginning of the first sentence; substituted "department" for "commissioner of state lands and investments" near the begin-

81-618 to 81-620. Repealed.

Repeal

Sections 81-618 to 81-620 (Sec. 18, Ch. 148, L. 1937; Secs. 1, 2, Ch. 205, L. 1945; Sec. 1, Ch. 146, L. 1953), repealing prior

law and relating to leases outstanding under the prior law, were repealed by Sec. 116, Ch. 428, Laws 1973.

CHAPTER 7—LEASES AND PERMITS FOR DEPOSITS OF STONE, GRAVEL, SAND AND OTHER MINERALS

Section

81-701. The board may issue leases.

81-702. Report of lessee and payment and distribution of royalties and other receipts.

81-704. Stone, gravel and sand permits for public use.

81-701. (1805.52) The board may issue leases. When there are found upon state lands deposits of stone, limestone, oil shale, clay, bentonite, calsite, talc, mica, ceramic, asbestos, marble, diatomite, gravel or sand, or phosphate, sodium, potash, sulphur, fluorite or barite, or any other nonmetallic minerals, but not including coal, oil, or gas, valuable for building, mining, or other commercial purposes, the state board of land commissioners may, in its discretion, issue to private persons permits or leases for the removal and disposition of the above named deposits, upon such terms and conditions as the board may determine. All such leases

shall be upon a royalty basis calculated upon a gross value by weight or cubic measurement as is most favorable for the particular substance being mined or extracted from the lands. The gross value shall be determined at the mine or site of operation, and the rates shall be the same that ordinarily would be charged by private owners under similar circumstances, or as in the determination of the board is fair and reasonable. The fee for issuing the lease is the same as for an oil and gas lease. No such lease shall be made for a longer term than ten (10) years, and the board may demand a cash deposit to guarantee the payment of the royalties, or demand a surety bond, or both a cash deposit and bond, as the board may determine.

History: En. Sec. 52, Ch. 60, L. 1927; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973.

Amendments

The 1973 amendment deleted "to which

the title is vested in the state, and which lands have not been sold by the state under certificate of purchase, or otherwise" following "When there are found upon state lands" at the beginning of the section; and made minor changes in style and phraseology.

81-702. (1805.53) Report of lessee and payment and distribution of royalties and other receipts. On or before the last day of each month, every holder of a producing lease under this chapter, shall make a report to the department of state lands on a form the department prescribes, showing the amount of substances mined or extracted from the lands in the preceding month, the price obtained, the total amount of sales and any additional information required. The report shall be verified by affidavit of the lessee, or some responsible person having knowledge of the facts, and shall be accompanied by payment of the amount to the state as royalty for the month covered by the report. The royalties, fees, and penalties received under these leases shall be credited to the various funds to which they properly belong in the same manner as is now provided for crediting the same under oil and gas leases.

History: En. Sec. 53, Ch. 60, L. 1927; amd. Sec. 2, Ch. 194, L. 1945; amd. Sec. 50, Ch. 428, L. 1973.

Amendments

The 1973 amendment changed the date on which the report is due from the fif-

teenth to the last day of the month; inserted "producing" before "lease" near the beginning of the first sentence; substituted references to the department of state lands for references to the state board of land commissioners; and made minor changes in style and phraseology.

81-704. (1805.55) Stone, gravel and sand permits for public use. The board may in its discretion, issue permits upon such terms and conditions it determines, to the department of highways, the board of county commissioners of any county of the state, or to the governing body of a city or town and of any other political subdivision of the state, granting them the right to take, remove, and use stone, gravel, or sand from any state lands that have not been sold under certificate of purchase or otherwise for the construction, maintenance, and improvement of public roads, highways, bridges, streets, or alleys. The rights of lessees to the lands on which such stone, gravel, or sand may be located shall be properly safeguarded under the terms of the permits.

History: En. Sec. 55, Ch. 60, L. 1927; amd. Sec. 51, Ch. 428, L. 1973.

reference to the department of highways for a reference to the state highway commission; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted the

CHAPTER 8—GRANTING OF EASEMENTS FOR PUBLIC PURPOSES

Section

- 81-801. Sale of state lands to United States—easements for public purposes granted—mineral reservations—land for projects administered by the department of natural resources and conservation.
81-802. Easements for school sites and grounds and other public uses.
81-803. Easements on state land—application for—action on.

81-801. (1805.56) Sale of state lands to United States—easements for public purposes granted—mineral reservations—land for projects administered by the department of natural resources and conservation. (1) Any state lands needed by the United States in the construction of projects for the control of floods, river regulation, conservation of water, irrigation, and reclamation works, or transmission or distribution of electric energy, shall, upon application to the board of land commissioners, be sold and conveyed to the United States at the price per acre fixed by the board of appraisers appointed by the United States to appraise and value lands to be included within such projects and needed by the United States in the construction thereof, subject, however, to the approval of the state board of land commissioners and the price limitations of the Enabling Act and the state constitution.

(2) There is granted to the United States over all state lands an easement of sufficient width for the purpose desired for right of way for ditches, canals, tunnels, telephone, telegraph, and electric power lines now constructed or to be constructed by the United States in furtherance of the reclamation of arid lands, flood control, river regulation, conservation of water, and transmission and distribution of electric energy.

(3) All conveyances of state lands shall contain a reservation of such rights of way easements. If the lands herein granted as rights of way cease to be used for that purpose, they shall revert to the state, upon notice to that effect being given to the proper authorities.

(4) The mineral reservations now applying to sale of lands received through grants from the United States apply to all lands sold to the United States under this section, but all prospecting and exploration for minerals therein, the mining and removal thereof, and all operations carried on in connection therewith, must be carried on in such manner and under such regulations that they will not interfere with the use of the lands for the purposes for which they have been purchased by the United States.

(5) Lands needed by the United States for any of the previously specified purposes may be appraised or reappraised without appraising the remaining state lands in the county in which they are located. The lands shall be appraised at their full market value.

(6) The provisions of this section governing the sale of state lands to the United States also apply to the sale of state lands for projects financed by the United States under the administration of the department of natural resources and conservation, except as to appraisal by the United States.

History: En. Sec. 56, Ch. 60, L. 1927; amd. Secs. 1, 2, 3 and 4, Ch. 37, Ex. L. 1933; amd. Sec. 1, Ch. 80, L. 1945; amd. Sec. 52, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "sec-

tion" for "act" near the beginning of subsections (4) and (6); substituted "department of natural resources and conservation" for "state water conservation board" near the end of subsection (6); and made minor changes in phraseology.

81-802. (1805.57) Easements for school sites and grounds and other public uses. The board may grant easements in state lands for school-house sites and grounds, for public parks, community buildings, cemeteries, and other public uses upon proper applications accompanied by accurate and duly verified plats from the lawfully constituted authorities having charge of those properties.

History: En. Sec. 57, Ch. 60, L. 1927; amd. Sec. 6, Ch. 257, L. 1965; amd. Sec. 53, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style.

81-803. (1805.61) Easements on state land—application for—action on. (1) Application for an easement on state land must be made to the department of state lands. It shall describe the proposed right of way according to survey, show the necessity for the proposed highway or street or other easement, and give any additional information the department requires. This application shall be accompanied by two (2) exact copies of the official plat of the proposed highway, street, or other easement duly verified by the affidavit of the county surveyor or county or city engineer, or other engineer having prepared the same, endorsed thereon. These plats shall show the quantity of land taken by the proposed highway or street or other easement for each forty (40) acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of that forty (40) acre tract or government lot. When deemed necessary by the department, these plats shall show all these facts for such smaller subdivisions as the circumstances may render desirable for the state. However, when the purpose of the right of way applied for is the transmission or distribution of electric energy, or the construction and operation of pipelines or telephone, telegraph or radio systems, the plats and measurements need not be given, except the description of the location of the center line of the right of way, and the entire right of way may be applied for in one application with only one plat of the entire right of way required. Easements granted under this section include permission to install and maintain poles, anchors, and other appurtenances necessary for the mechanical support of the transmission or distribution lines.

(2) Upon the filing of an application and plats, the department shall, whenever it considers it necessary, examine the proposed right of way and report its findings to the board. The board shall consider the appli-

cation and report and take any action it considers proper, including the fixing of compensation and damages to be paid to the state. The compensation shall be the full market value of the estate or interest disposed of through the granting of the right of way easement, and the damages shall be the actual damages resulting to the remaining land as nearly as they can be ascertained. If the right of way is granted according to the plat, the plat shall become the official plat thereof, and shall be retained in the office of the department. The board shall issue right of way deeds for all such easements that it grants, upon full payment being made.

(3) If the state land over or through which a right of way is applied for is under certificate of purchase or sales contract, the purchaser, or his assignee, must be made a party to the proceedings, and his consent in writing to the laying out and establishment of the proposed highway, street, or other easement, and to the amount of compensation and damages to be paid, must be filed with the board before the right of way is granted. The board is the judge of how much compensation and damages shall be paid to the state and applied on the certificate of purchase or sales contract and of how much, if any, shall be paid to the purchaser, as the circumstances in each individual case warrant. This subsection applies to all grants of rights of way on state lands.

History: En. Sec. 61, Ch. 60, L. 1927; amd. Sec. 1, Ch. 108, L. 1939; amd. Sec. 1, Ch. 99, L. 1951; amd. Sec. 1, Ch. 203, L. 1953; amd. Sec. 1, Ch. 200, L. 1965; amd. Sec. 54, Ch. 428, L. 1973.

subsection (1); substituted "examining proposed right of way" for "cause the proposed right of way to be viewed and examined by the chief field agent or some assistant field agent" in the first sentence of subsection (2); substituted "issue right of way deeds for all such easements that it grants" for "cause right of way deeds to be issued for all such easements that it may hereafter grant" near the end of subsection (2); and made minor changes in style, punctuation and phraseology.

Amendments

The 1973 amendment substituted references to the department of state lands for references to the state board of land commissioners; substituted "section" for "provisions of this act" in the last sentence of

CHAPTER 9—SALE OF STATE LANDS

Section

- 81-901. Certain state lands not subject to sale.
- 81-902. Mineral reservations in state lands.
- 81-905. Surveying and platting left to discretion of board.
- 81-908. Who may purchase and how much.
- 81-910. Notice of sale.
- 81-912. Regulations concerning sale—forfeiture for nonpayment—disposition of proceeds.
- 81-915. Terms of payment.
- 81-917. Lien on improvements and crops for principal, interest.
- 81-919. Settlement for improvements.
- 81-921. Certificate of purchase.
- 81-923. Payments of installments.
- 81-924. Default in payment of purchase price—cancellation of certificate.
- 81-926. Certificates may be assigned.
- 81-927. Lost certificate.
- 81-928. Land subject to taxation.
- 81-930. Lands reverting to state—procedure.
- 81-932. Patents, how executed.

81-901. (1805.64) Certain state lands not subject to sale. Lands classified as timberlands are not subject to sale. but timber thereon may

be sold and disposed of in the manner provided by law. Lands which in the judgment of the board of land commissioners are likely to contain valuable deposits of coal, oil, oil shale, phosphate, metals, sodium, or other valuable mineral deposits, are not subject to sale, either the surface land or any of such deposits therein. However, this does not prohibit the sale of lands containing sand, gravel, building stone, brick clay, or similar materials.

History: En. Sec. 64, Ch. 60, L. 1927; amd. Sec. 55, Ch. 428, L. 1973.

lowing "oil shale" in the second sentence; and made minor changes in style and phraseology.

Amendments

The 1973 amendment deleted "gas" fol-

81-902. (1805.65) Mineral reservations in state lands. All coal, oil, oil shale, gas, phosphate, sodium, and other mineral deposits, except sand, gravel, building stone, and brick clay, in state lands, which were not reserved by the United States before July 1, 1927, are reserved to the state. All those deposits are reserved from sale except upon a rental and royalty basis as provided by law. A purchaser of state lands acquires no right, title, or interest in or to any of those deposits. The state also reserves for itself and its lessees the right to enter upon these lands to prospect for, develop, mine, and remove those deposits and to occupy and use so much of the surface of the lands as may be required for all purposes reasonably extending to the exploring for, mining, and removal of the deposits therefrom, but the lessee shall make just payment to the purchaser for all damage done by reason of such entry upon the land and the use and occupancy of the surface thereof.

History: En. Sec. 65, Ch. 60, L. 1927; amd. Sec. 1, Ch. 28, L. 1929; amd. Sec. 1, Ch. 183, L. 1935; amd. Sec. 1, Ch. 184, L. 1961; amd. Sec. 56, Ch. 428, L. 1973.

lands" for "lands belonging to the state of Montana, or which may hereafter become property of the state" in the first sentence; substituted "before July 1, 1927" in the first sentence for "already"; and made minor changes in style, phraseology and punctuation.

Amendments

The 1973 amendment substituted "state

81-905. (1805.68) Surveying and platting left to discretion of board. It shall be entirely optional with the board whether or not state lands, or any part thereof, shall be surveyed, platted and laid off into blocks and lots as hereinabove provided, as may appear to be for the best interests of the state. All lands within the limits of any town or city or within three (3) miles of such limits shall, however, be subdivided into lots or tracts of not more than five (5) acres each before being offered for sale and the lots must then be sold alternately at regular sales of state lands.

When such tracts of five (5) acres or less have been sold, the board shall whenever deemed necessary cause the plat thereof to be filed for record with the county clerk and recorder of the county in which the land is situated, but if the same purchaser bids in two or more adjoining lots or tracts, all the lots so purchased shall at the option of the purchaser be included in one certificate of purchase.

History: En. Sec. 68, Ch. 60, L. 1927; amd. Sec. 41, Ch. 100, L. 1973.

Amendments

The 1973 amendment substituted "within the limits of any town or city or within three (3) miles of such limits" in the sec-

ond sentence of the first paragraph for "of the fourth class as defined by section 1, article XVII, of the constitution"; and deleted "as provided by section 2, article XVII, of the constitution" after "sold alternately" in the second sentence of the first paragraph.

81-908. (1805.71) Who may purchase and how much. State lands shall be sold only to citizens of the United States or to persons who have declared their intentions to become citizens, or to corporations organized under the laws of this state. No person shall be qualified to purchase state land who has not reached the age of eighteen (18) years. As far as possible to determine the lands shall be sold only to actual settlers or to persons who will improve the same, and not to persons who are likely to hold such lands for speculative purposes intending to resell the same at a higher price without having added anything to their value. No person or corporation shall be entitled to purchase more than one section of state land, and this area shall not include more than one hundred and sixty (160) acres of land susceptible of irrigation. These limitations as to area and irrigableness shall not apply to lands within a federal irrigation project wherein the Congress of the United States of America now or hereafter authorizes water to be furnished to an area exceeding one hundred and sixty (160) irrigable acres.

State lands may be sold to any sovereign state of the United States or to any board of trustees or public corporation or agency of such state created by such state as an agency or political subdivision thereof. Said lands may be purchased in the quantities set forth in this section for use by such state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.

The title to any state lands which have been heretofore purchased by a sovereign state or a board of trustees or public corporation, agency or political subdivision thereof qualified under the provisions of this act is hereby ratified and confirmed.

History: En. Sec. 71, Ch. 60, L. 1927; amd. Sec. 1, Ch. 95, L. 1949; amd. Sec. 1, Ch. 10, L. 1959; amd. Sec. 2, Ch. 184, L. 1961; amd. Sec. 19, Ch. 240, L. 1971; amd. Sec. 31, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the age specified at the end of the second sentence of the first paragraph from 21 to 19 years.

The 1973 amendment reduced the age specified at the end of the second sentence of the first paragraph from 19 to 18 years.

81-910. (1805.73) Notice of sale. (1) The department shall give notice of each sale by publication in a newspaper of general circulation in the county where the sale is to be held, once each week through the four (4) consecutive weeks preceding the date of sale. The notice shall give the day, date, and time of the beginning of the sale, and contain a list of all the tracts to be offered for sale showing the township and range in which they are located, describing them with reference to section number and subdivision of the section, or with reference to block and lot if surveyed, the number of acres in unplatted lands, and the appraised value per acre and the appraised value of each lot. As a general rule

nonirrigable farming lands shall be listed in quarter sections; grazing lands may be listed in larger tracts not exceeding one (1) section.

(2) For the convenience of the bidders, the department may assign to the tracts advertised a consecutive series of sales numbers and show the sales number of each tract in the notice of sale.

(3) The notice shall also give the terms and conditions of sale, and any additional information the department considers useful.

History: En. Sec. 73, Ch. 60, L. 1927; amd. Sec. 4, Ch. 184, L. 1961; amd. Sec. 57, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted references to the de-

partment for references to the commissioner; substituted "a newspaper of general circulation in" for "the official county paper" in the first sentence of subsection (1); and made minor changes in style, phraseology and punctuation.

81-912. (1805.75) Regulations concerning sale—forfeiture for non-payment—disposition of proceeds. (1) At the time fixed for the sale, the lands shall be offered for sale at auction in the order they appear in the notice of sale, and under the direction of the department the lands shall be sold to the highest qualified bidder under the following restrictions:

- (a) No lands may be sold for less than the appraised value;
- (b) Tillable lands capable of producing agricultural crops may not be sold for less than ten dollars (\$10) per acre;
- (c) Lands principally valuable for grazing purposes may not be sold for less than five dollars (\$5) per acre.

(2) The lessee of the land need not make a higher bid than others, but he shall, if bidding an equal amount, be given the preference. The lands shall be sold as nearly as practicable according to the subdivisions in which they are advertised, and care shall be taken not to subdivide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways. The sale may be adjourned from day to day until all the lands advertised have been offered for sale.

(3) If any successful bidder at a sale refuses or neglects to make the initial payment required to be made on the land purchased by him, he shall forfeit to the state not less than fifty dollars (\$50) nor more than one thousand dollars (\$1000) to be determined by the board according to the circumstances of the case. If such forfeiture is not paid when notice of the amount of the forfeiture has been served by the department, the attorney general shall sue for the recovery thereof in the name of the state.

(4) The proceeds from the lands sold, including all subsequent payments on the principal, shall be credited to the permanent fund arising from the grant to which it belongs and shall become and forever remain an inseparable and inviolable part thereof. All payments on interest shall be credited to the proper income fund and shall be available for use as provided by law.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; amd. Sec. 5, Ch. 184, L. 1961; amd. Sec. 58, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "direction of the department" for "personal direction of the

commissioner or the assistant commissioner, one of whom shall be present at the sale" near the end of the preliminary clause in subsection (1); substituted "de-

partment" for "commissioner" near the end of the second sentence in subsection (3); and made minor changes in style, phraseology and punctuation.

81-915. (1805.79) Terms of payment. (1) Every purchaser of state land shall pay on the day of sale that portion of the purchase price as he may desire, but in no case less than ten per cent (10%) of the total sales price, and in case the balance on the purchase price is not an exact multiple of twenty-five dollars (\$25), then he shall pay such additional sum as is necessary to reduce the balance to an even multiple of twenty-five dollars (\$25).

(2) The balance of the purchase price shall draw interest at the rate set by the board, but in no instance shall the rate be less than five per cent (5%) per year, payable annually, and the balance of the purchase price itself shall be payable through a period of thirty-three (33) years on the amortization plan. This plan is defined as being that plan under which part of the principal is required to be paid each time interest becomes due and payable, and under which this part payment on the principal increases at each succeeding installment in the same amount that the interest payment decreases so that the combined amount due on principal and interest on each due date remains the same until the loan or bond is paid in full. However, the amount of the last installment may vary from the other installments to the extent resulting from disregarding fractional cents in the previous installments. The balance of the purchase price on town and city lots shall be payable on the amortization plan through a period of twenty (20) years, but the board may at any time fix a shorter period than twenty (20) years for the payment of the balance on town and city lots, and different periods of time may be established for different towns and cities as the best interests of the state demand. The board shall annually review the interest rate prior to December 31 of each year and fix the interest rate for all contracts to be entered into during the succeeding year.

History: En. Sec. 79, Ch. 60, L. 1927; amd. Sec. 1, Ch. 149, L. 1939; amd. Sec. 8, Ch. 257, L. 1965; amd. Sec. 10, Ch. 22, L. 1971; amd. Sec. 59, Ch. 428, L. 1973; amd. Sec. 1, Ch. 191, L. 1974.

Amendments

The 1971 amendment deleted the fee of \$5.00 for issuance of certificate of purchase, and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

The 1973 amendment numbered the subsections; deleted "he shall also in all cases

pay such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners for each certificate of purchase to be issued to him" from the end of subsection (1); and made minor changes in style and phraseology.

The 1974 amendment substituted "at the rate set by the board, but in no instance shall the rate be less than five per cent (5%) per year" in the first sentence of subsection (2) for "at the rate of five per cent (5%) per annum"; and added the last sentence in subsection (2).

81-916. (1805.80) Repealed.

Repeal

Section 81-916 (Sec. 80, Ch. 60, L. 1927), relating to conversion of certificates of

purchase issued prior to February 13, 1923, to amortization certificates, was repealed by Sec. 116, Ch. 428, Laws 1973.

81-917. (1805.81) Lien on improvements and crops for principal, interest. The state has a lien prior and superior to all other liens, except

threshermen's liens and seed liens as specified in sections 45-701 and 45-801, which have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due and other charges as evidenced by the original loan-contract, and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated. This lien is upon all buildings, structures, fences, and all other improvements upon the lands so sold and upon all crops growing upon any of these lands, and also upon such crops after they have been separated from the lands, for all due and delinquent installments of principal and interest and penalty interest and taxes under the certificate of purchase and also for all installments becoming due during the calendar year in which the crop is harvested, and this lien is hereby expressly reserved. Any person purchasing or otherwise acquiring the improvements or crops or any part thereof, takes them subject to the lien. Any representative of the department or sheriff of the county in which the land is located, or his deputy, may demand of the purchaser or his agent payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand, or any representative of the department, may immediately seize the improvements and crops, and upon giving three (3) days' notice, sell and dispose of, either at private or public sale, sufficient of the crops or improvements or of both to pay the amounts due the state, together with cost and expenses of seizure and sale.

History: En. Sec. 81, Ch. 60, L. 1927; amd. Sec. 60, Ch. 428, L. 1973.

latter part of the first sentence, beginning "but only for the aggregate," for "as specified in section 52-301"; and made minor changes in style, phraseology and punctuation.

Amendments

The 1973 amendment substituted the

81-919. (1805.83) Settlement for improvements. If any state land is sold on which there are improvements belonging to a lessee, and some person other than the lessee is the purchaser, that person shall settle with the lessee for all improvements on the land belonging to the lessee before the issuance of the certificate of purchase. The provisions of sections 81-421 and 81-421.1 relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee apply to the settlement between a lessee and the purchaser. If settlement is not reached within six (6) months of date of sale, all improvements become the property of the state unless the department for good cause shown grants both parties additional time in which to exhaust arbitration.

History: En. Sec. 83, Ch. 60, L. 1927; amd. Sec. 9, Ch. 257, L. 1965; amd. Sec. 61, Ch. 428, L. 1973.

provisions of sections 81-421 and 81-421.1" for "All provisions of this act" at the beginning of the second sentence; substituted "department" for "commissioner" near the end of the section; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted "The

81-921. (1805.85) Certificate of purchase. (1) Upon the approval of the sale and receipt of satisfactory evidence of settlement with the former lessee, if any, for improvements on the land, the department shall execute and mail to the purchaser a certificate of purchase signed

by the governor as president of the board and by the commissioner of state lands and attested by the seal of the board. The certificate of purchase shall contain the date of sale, the name and post-office address of the purchaser, a description of the land, the total purchase price, the amount paid on the day of sale, the balance unpaid, and the amount and due date of each installment of principal and interest to the time of maturity. The certificate shall reserve the easements for rights of way granted by the statutes in favor of the United States and other easements that may have been granted by the board and shall contain the reservations in favor of the state provided for in section 81-902 relating to coal, oil, and mineral rights in the land.

(2) The certificate shall also contain information in regard to the lien of the state on crops and improvements on the land for installments of principal and interest and taxes, and any additional conditions, agreements, and information the board considers necessary in order to carry out the intent of this act.

History: En. Sec. 85, Ch. 60, L. 1927; amd. Sec. 62, Ch. 428, L. 1973.

subsection (1); substituted "commissioner of state lands" for "commissioner acting as secretary of the board" near the end of the first sentence in subsection (1); substituted "section 81-902" for "in this act" near the end of subsection (1); and made minor changes in style and phraseology.

Amendments

The 1973 amendment numbered the subsections; substituted "department" for "commissioner" in the first sentence of

81-923. (1805.87) Payments of installments. The department is not required to accept fractional payments of the installments on certificate of purchase, on account of the complications arising from the division of payments. The purchaser may make payment of one (1) or more installments before the same becomes due, but unless such payments are made at least six (6) months before the installments become due, no reduction may be made in the interest payments. If installments on principal and interest are paid more than six (6) months prior to the due date, the interest from the date of such payment shall be figured upon the balance of the principal unpaid after the advance payment has been made up to the date on which it comes due. If for any reason any installment is not paid when due, the total of that installment, including payment on the principal and payment on interest, shall draw penalty interest at the rate of six per cent (6%) per annum from the date due until the date actually paid. Payment may be made in full at any time before maturity by paying the balance on the principal and interest accrued up to the date of such payment.

History: En. Sec. 87, Ch. 60, L. 1927; amd. Sec. 63, Ch. 428, L. 1973.

partment" for "commissioner" at the beginning of the first sentence; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted "de-

81-924. (1805.88) Default in payment of purchase price—cancellation of certificate. If any purchaser or assignee of state land defaults for a period of thirty (30) days or more in the payment of any of the installments due on his certificate of purchase, the certificate is subject to

cancellation. The department shall mail to him at his last known post-office address a notice of default and pending cancellation. The notice shall give him sixty (60) additional days from the date of mailing the notice in which to make payment of the delinquent installment or installments with penalty interest. If he fails to make the payment within sixty (60) days, the certificate of purchase shall from that date and without further notice be void, the duplicate of the certificate in the office of the department shall be canceled, and the land under the certificate shall revert to and become the property of the state to the same extent as other state lands, and shall be open to lease and sale. All buildings, fences, and other improvements placed thereon subsequent to the date of execution of the certificate of purchase shall be and remain the property of the purchaser named in the certificate of purchase or of his heirs, assigns, or devisees, and may be removed from the land at any time within ninety (90) days after the date of the cancellation. If the buildings, fences, and other improvements are not removed prior to the expiration of the ninety (90) day period, they become the property of the state. In case of cancellation of certificate of purchase or surrender of certificate of purchase, and where the land is again open to lease, the former lessee has the prior right to lease the tract at the existing rate, or at the rate set by competitive bidding if such occurs.

History: En. Sec. 88, Ch. 60, L. 1927; amd. Sec. 4, Ch. 141, L. 1939; amd. Sec. 1, Ch. 159, L. 1951; amd. Sec. 64, Ch. 428, L. 1973.

signee" near the beginning of the first sentence; substituted references to the department for references to the board and the commissioner; and made minor changes in style and phraseology.

Amendments

The 1973 amendment inserted "or as-

81-926. (1805.90) Certificates may be assigned. Certificates of purchase may be assigned to a citizen of the United States, or to a person who has declared his intention to become a citizen, or to a corporation organized under the laws of this state. Such assignments shall be made on forms prescribed by the department, shall be duly acknowledged as other conveyances of real estate, and shall be executed in duplicate, one (1) copy to be filed and retained in the office of the department, and one (1) copy to be retained by the assignee. A person is not qualified to receive an assignment if the lands he has already purchased from the state together with the lands included in the assignment exceed one (1) section; the assignee must in all respects possess the same qualifications as an original purchaser.

History: En. Sec. 90, Ch. 60, L. 1927; amd. Sec. 65, Ch. 428, L. 1973.

ences to the department for references to the commissioner; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted refer-

81-927. (1805.91) Lost certificate. If a certificate of purchase to state lands is lost or is wrongfully withheld by any person from the owner thereof, the rightful owner may apply to the board for the issuance of a substitute certificate. This application shall be accompanied by an affidavit from the owner of the certificate setting forth the facts

in regard to the loss or unlawful withholding of the certificate, and by a certificate from the county clerk and recorder of the county in which the land is located showing all instruments of record in his office affecting the title to the land under the certificate. The board shall issue a substitute certificate of purchase to the applicant if in the judgment of the board the facts warrant its issue.

History: En. Sec. 91, Ch. 60, L. 1927; amd. Sec. 66, Ch. 428, L. 1973.

stitute certificate" for "lieu certificate" in two places; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted "sub-

81-928. (1805.92) Land subject to taxation. (1) State lands purchased from the state are subject to taxation to the full value thereof. The department of revenue shall assess the purchaser for the full value of the land on the first Monday of March following the date of purchase. The holder of certificates of purchase to lands within irrigation districts is liable for the entire tax levied against the land thereunder on account of such irrigation district.

(2) The improvements on the land shall be assessed and taxed as other improvements on farm lands.

(3) On or before March 15 of each year, the department shall furnish the department of revenue or its agent in each county with a complete list of all state lands sold in his county during the year ending on the first Monday of March of each year. This list shall show the name and address of the purchaser, the legal description of the land, and the acreage contained therein.

History: En. Sec. 92, Ch. 60, L. 1927; amd. Sec. 1, Ch. 107, L. 1953; amd. Sec. 52, Ch. 391, L. 1973; amd. Sec. 67, Ch. 428, L. 1973.

Amendments

Chapter 391, Laws of 1973, substituted "department of revenue" for "assessor" in the second sentence of what is now subsection (1); and substituted "department of revenue or its agent in" for "county assessor of" in the first sentence of what is now subsection (3); both to implement article VII, section 3 of the 1972 constitution.

Chapter 428, Laws of 1973, numbered the subsections; substituted "department" for "commissioner" in the first sentence of subsection (3); and made minor changes in style, phraseology and punctuation.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 391 and once by Ch. 428. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not conflict the compiler has made a composite section embodying the changes made by both amendments.

81-930. (1805.94) Lands reverting to state—procedure. If any lands sold under this title revert to the state for any reason, the department shall notify the department of revenue and the county treasurer of the county in which the land is situated of that fact. Upon the receipt of the notice, the department of revenue shall cancel any assessment of the land for that year, and the county treasurer shall cancel all tax liens against the land.

History: En. Sec. 94, Ch. 60, L. 1927; amd. Sec. 53, Ch. 391, L. 1973; amd. Sec. 68, Ch. 428, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 391 and once by Ch. 428.

Neither amendatory act mentioned or incorporated the changes made by the other. Since the changes do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 391, Laws of 1973, substituted "department of revenue" for "assessor" in two places in order to implement article VII, section 3 of the 1972 constitution.

Chapter 428, Laws of 1973, substituted "title" for "act" near the beginning of the first sentence; substituted "department" for "commissioner of state lands" in the middle of the first sentence; substituted "tax liens" for "taxes remaining unpaid" near the end of the section; deleted "for that and all previous years" from the end of the section; and made minor changes in style, phraseology and punctuation.

81-932. (1805.96) Patents, how executed. (1) The governor, and in his absence or inability, the lieutenant governor, shall execute deeds or patents of conveyance transferring without covenants any lands sold by the board under the laws of this state when full payment has been made therefor. Such deed or patent shall contain the reservation of easements for rights of way to the United States, reservation of all minerals in the land as provided in section 81-902, and all other reservations to which the particular land conveyed is subject. If the land is located within the boundaries of a federal irrigation project, the patent shall contain a lien clause substantially in the following form: "The land hereby conveyed is located within the boundaries of a federal irrigation project and is subject to all liens which the United States may have thereon by reason of its being located under such irrigation project." The deed or patent shall be attested by the secretary of state, countersigned by the commissioner of state lands, and have the great seal of the state and the seal of the board thereto attached, but need not be acknowledged. A certified copy of the record of any such deed or patent shall be received in evidence in all courts of record of this state the same as the original.

(2) This section does not require any reservation in a patent which was not an express or implied reservation in the certificate of purchase pursuant to which the patent is issued; the statutes in effect when such certificate of purchase was issued must govern.

History: En. Sec. 96, Ch. 60, L. 1927; amd. Sec. 69, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the sub-

sections; substituted "section 81-902" for "this act" near the end of the second sentence of subsection (1); and made minor changes in style and phraseology.

81-934 to 81-942. Repealed.

Repeal

Sections 81-934 to 81-942 (Secs. 1 to 3, Ch. 106, L. 1945; Secs. 1 to 6, Ch. 196, L. 1947), relating to certain contracts exe-

cuted between 1923 and 1928, and authorizing the sale of a specific tract of land, were repealed by Sec. 116, Ch. 428, Laws 1973.

CHAPTER 10—INVESTMENTS

81-1001 to 81-1007.1, 81-1008. (930, 1805.98 to 1805.105) Repealed.

Repeal

Sections 81-1001 to 81-1007.1, 81-1008 (Sec. 2, Ch. 47, L. 1903; Sec. 1, Ch. 11, L. 1921; Secs. 98 to 105, Ch. 60, L. 1927; Sec. 1, Ch. 26, L. 1931; Sec. 2, Ch. 139, L. 1933; Secs. 224, 225, Ch. 147, L. 1963; Sec.

31, Ch. 234, L. 1971; Sec. 1, Ch. 1, 2nd Ex. L. 1971; Sec. 42, Ch. 100, L. 1973), relating to investment of funds of the institutional permanent funds, were repealed by Sec. 9, Ch. 298, Laws 1973. For new law, see secs. 79-308 to 79-311.

81-1009 to 81-1014. (1805.106 to 1805.111) Repealed.

Repeal

Sections 81-1009 to 81-1014 (Secs. 106 to 111, Ch. 60, L. 1927), relating to state

farm loans and mortgages, were repealed by Sec. 103, Ch. 326, Laws of 1974.

**CHAPTER 11—STATE LANDS AND INVESTMENTS—
MISCELLANEOUS PROVISIONS**

Section

- 81-1101. Acceptance of federal land grants.
- 81-1101.1. Board may accept federal facilities and installations—title in state.
- 81-1102. Gifts, donations, grants, legacies and devises to the state.
- 81-1103. Donations of land for forestry purposes.
- 81-1108, 81-1109. [Transferred.]
- 81-1110. Who may not buy or lease state lands.
- 81-1113. [Transferred.]
- 81-1115. State land equalization payments to counties—list of lands transmitted to department of revenue.
- 81-1116. Computation of state land equalization payment.
- 81-1117. Form to be completed by department of revenue—method of computation shown.
- 81-1118. County statement on equalization payments examined by department—claim filed with department of administration.
- 81-1119. Warrant for state land equalization payments to counties.
- 81-1120. County distribution of state land equalization payments.
- 81-1121. School district use of state land equalization proceeds.
- 81-1122. Reports by state treasurer.

81-1101. (1805.113) Acceptance of federal land grants. The state board of land commissioners may accept any grant of lands from the United States to the state made in carrying out the provisions of the Enabling Act and also any other grant for any special purpose that may be made by the United States to the state. Any acceptance by the board on behalf of the state, that has taken place prior to July 1, 1927, of lands granted by the United States to the state is hereby ratified.

History: En. Sec. 113, Ch. 60, L. 1927; amd. Sec. 70, Ch. 428, L. 1973.

Amendments

The 1973 amendment deleted "The federal land grants made to the state of Montana through the so-called Enabling Act have already been accepted as a whole through the adoption of the state constitu-

tion and specifically by subdivision 7 of ordinance No. 1 thereof" from the beginning of the first sentence; substituted "July 1, 1927" for "this act" in the second sentence; deleted "confirmed and approved" from the end of the section; and made minor changes in style and phraseology.

81-1101.1. Board may accept federal facilities and installations—title in state. The board may on behalf of the state accept donations of federal installations, facilities, lands, or properties. All title to the installations or facilities shall be vested in the name of the state for its use. This section does not limit, reduce, or supersede sections 82-3101 through 82-3104.

History: En. Sec. 1, Ch. 252, L. 1965; amd. Sec. 71, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "board"

for "state board of examiners" at the beginning of the section; and made minor changes in style and phraseology.

81-1102. (1805.114) Gifts, donations, grants, legacies and devises to the state. The state board of land commissioners is hereby authorized

and empowered to accept on behalf of the state from any natural person gifts, donations, grants, legacies and devises having a value of not less than two hundred fifty dollars (\$250.00) from each person. All lands passing to the state under these provisions or through the operation of law, shall be managed as other state lands and the rents and earnings shall be applied in accordance with the object and purpose specified by the grantor, subject to all constitutional limitations. All money realized from the sale of such lands and from other property and all gifts, donations, grants, legacies, and devises made in money, or the equivalent of money, shall be administered by the board for the benefit of the specific purposes designated by the person from whom they were received and as further regulated by this act. The provisions of this section shall apply to gifts, donations, grants, legacies and devises already made to the state and now under the administration of the board if not contrary to any specific provisions made therein by the persons from whom they were received.

History: En. Sec. 114, Ch. 60, L. 1927;
amd. Sec. 43, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "for any purpose authorized by article XXI of the

constitution" from the end of the first sentence; and deleted "as provided by article XXI of the constitution" after "they were received" in the latter part of the third sentence.

81-1103. Donations of land for forestry purposes. The board may accept gifts, donations, or contributions of land suitable for forestry or park purposes, and enter into agreements with the federal government or other agencies for acquiring by lease, purchase, or otherwise such lands as in the judgment of the board are desirable for state forests.

History; En. Sec. 1, Ch. 159, L. 1937;
amd. Sec. 72, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in phraseology and punctuation.

81-1108, 81-1109. [Transferred.]

Compiler's Notes

Sections 73 and 74 of Ch. 428, Laws

1973, redesignated these sections as secs. 81-106 and 81-107.

81-1110. (1805.117) Who may not buy or lease state lands. It is unlawful for any member of the board, or any person appraising lands, or in the employ of the state for the selection, classification, appraisal, sale, or leasing of any state lands or the timber thereon, or of any person connected with the department of state lands as an officer or employee, to purchase or lease, directly or indirectly, any of the land of the state or any timber thereon.

History: En. Sec. 117, Ch. 60, L. 1927;
amd. Sec. 75, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment of state lands" for "state land office" near the end of the section; and made minor changes in phraseology.

81-1113. [Transferred.]

Compiler's Notes

Section 76 of Ch. 428, Laws 1973, redesignated this section as sec. 81-108.

81-1115. State land equalization payments to counties—list of lands transmitted to department of revenue. The department shall, before the first Monday of April of every year, prepare and transmit a statement to the department of revenue or its agent in each county in which the state has real property in excess of six per cent (6%) of the total land area of the county and from which the state derives grazing, agricultural or forest income. The statement shall contain the total number of acres owned by the state in that county and list the acres separately as grazing, agricultural, or forest land.

History: En. Sec. 1, Ch. 235, L. 1967; amd. Sec. 54, Ch. 391, L. 1973; amd. Sec. 77, Ch. 428, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 391 and once by Ch. 428. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the changes do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Title of Act

An act providing for reimbursement to counties for loss of revenue because of tax exempt status of state owned land in excess of six per cent (6%) of the total land area; providing for procedures

to effectuate this purpose; prescribing the duties of the commissioner of state lands and investments, county assessors and the state controller; limiting the maximum payments; and providing an effective date.

Amendments

Chapter 391, Laws of 1973, substituted "department of revenue or its agent in" for "county assessor of" in the first sentence in order to implement article VIII, section 3 of the 1972 constitution.

Chapter 428, Laws of 1973, substituted "department" for "commissioner of state lands and investments for the state of Montana" at the beginning of the first sentence; and made minor changes in style, phraseology and punctuation.

81-1116. Computation of state land equalization payment. The department of revenue shall compute the amount of taxes which would be payable on the county assessments of said property as if it were owned by, and taxable to, a taxpayer of such county; provided that, if the land is not classified, the sum to be listed shall be determined by the average tax payment made on like property within the county where said land is situated, not to exceed twelve cents (\$.12) per grazing acre, thirty-five cents (\$.35) per agricultural acre, and twelve cents (\$.12) per forest acre. The average tax may be derived from the most recent biennial report of the state department of revenue. The total figure arrived at by this method shall be called the gross assessment figure. The county exemption factor shall be determined by dividing the percentage the state owned land bears to the total land area of the county into six per cent (6%). This quotient shall be multiplied by the gross assessment figure and the product is called the state exemption figure. The state exemption figure shall be subtracted from the gross assessment to give the state land equalization payment.

History: En. Sec. 2, Ch. 235, L. 1967; amd. Sec. 55, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

81-1117. Form to be completed by department of revenue—method of computation shown. The department shall provide a form to be followed and completed by the agent of the department of revenue in each county.

The agent shall, before October 1, make the computations required and submit to the department the completed form which shall show the computations and method used in arriving at the state land equalization payment.

History: En. Sec. 3, Ch. 235, L. 1967; amd. Sec. 56, Ch. 391, L. 1973; amd. Sec. 78, Ch. 428, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 391 and once by Ch. 428. Neither amendatory enactment mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 391, Laws of 1973, substituted "agent of the department of revenue in each county" for "county assessor" at the end of the first sentence; and substituted "agent" for "county assessor" at the beginning of the second sentence; both to implement article VIII, section 3 of the 1972 constitution.

Chapter 428, Laws of 1973, substituted references to the department for references to the commissioner of state lands and investments; and made minor changes in style and phraseology.

81-1118. County statement on equalization payments examined by department—claim filed with department of administration. The department shall examine the statement returned by the agent of the department of revenue for accuracy, and in no case shall the state land equalization payment be approved unless the state exemption figure is deducted from the gross assessment figure in the statement. The department shall, before November 1 of each year, prepare and file a claim with the department of administration for all counties who are eligible for state land equalization payments, and this claim shall show the amount of money each eligible county will receive.

History: En. Sec. 4, Ch. 235, L. 1967; amd. Sec. 57, Ch. 391, L. 1973; amd. Sec. 79, Ch. 428, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 391 and once by Ch. 428. Neither amendatory enactment mentioned or incorporated the changes made by the other. Since the changes do not appear to conflict the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 391, Laws of 1973, substituted "agent of the department of revenue" for "county assessor" in the first sentence in order to implement article VIII, section 3 of the 1972 constitution.

Chapter 428, Laws of 1973, substituted references to the department for references to the commissioner of state lands and investments at the beginning of the first and second sentences; substituted "department of administration" for "state controller" in the middle of the second sentence; and made minor changes in style and phraseology.

81-1119. Warrant for state land equalization payments to counties. The department of administration shall, before December 1, approve and authorize the issuance of a warrant on the general fund of the state made payable to the county treasurer of the counties shown on the claim for the payment of the state land equalization payment.

History: En. Sec. 5, Ch. 235, L. 1967; amd. Sec. 80, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment of administration" for "state controller" at the beginning of the section; and made minor changes in style and phraseology.

81-1120. County distribution of state land equalization payments. The county treasurer shall distribute the money received under this act within

their county as hereinafter provided; sixty per cent (60%) of total payment shall be broken down into cents per acre of total state owned land within the county, and apportioned between the elementary school districts in accordance with the amount of state owned land in each elementary district. Forty per cent (40%) shall be allotted to the county road fund.

History: En. Sec. 6, Ch. 235, L. 1967.

81-1121. School district use of state land equalization proceeds. The money received by any school district under sections 81-1115 through 81-1120 shall be designated as district money for the general maintenance and operation of the elementary schools of the district. Such money may be used by the district as all other cash balances are used, in accordance with the provisions of section 75-6915.

History: En. Sec. 7, Ch. 235, L. 1967; amd. Sec. 81, Ch. 428, L. 1973.

the reference to section 75-6915 for a reference to section 75-3618 at the end of the section.

Amendments

The 1973 amendment substituted "sections 81-1115 through 81-1120" for "this act" in the first sentence; and substituted

Effective Date

Section 8 of Ch. 235, Laws 1967 read "This act is effective January 1, 1968."

81-1122. (1805.9) Reports by state treasurer. On or before the tenth day of each calendar month, the state treasurer shall report to the department the amount of money received by him during the preceding month from each source, except from the department, for each income fund and each permanent fund arising from a federal land grant or otherwise under the control of the board, the amount paid out from each income fund or permanent fund during the month and the object of such payment, and the balance uninvested in each fund. These reports shall be on such forms and contain such additional information the department prescribes and the board approves.

History: En. Sec. 9, Ch. 60, L. 1927; Sec. 81-205, R. C. M. 1947; redes. 81-1122 and amd. by Sec. 6, Ch. 428, L. 1973.

Amendments

The 1973 amendment renumbered this section; substituted references to the department for references to the commissioner; and made minor changes in style and phraseology.

CHAPTER 13—REIMBURSEMENT OF FEDERAL GOVERNMENT FOR CERTAIN EMERGENCY CONSERVATION WORK

(Repealed—Section 116, Chapter 428, Laws of 1973)

81-1301. (1808.1) Repealed.

Repeal

Section 81-1301 (Sec. 1, Ch. 158, L. 1935), relating to reimbursement of the federal government for emergency con-

servation work resulting in profit to the state, was repealed by Sec. 116, Ch. 428, Laws 1973.

CHAPTER 14—STATE FORESTS—TIMBER SALES—FIREWARDENS

Section

81-1401. Classification of lands as state forests.

81-1404. Sale of timber—advertising for bids—purchaser's agreement.

81-1406. Breach of timber sale agreement.

81-1408. Duties concerning lumber cutting—scaling.

- 81-1409. Co-operation with owners and lessees.
- 81-1411. Duties of department of natural resources and conservation.
- 81-1412. Firewardens.
- 81-1413. Powers of firewardens.
- 81-1415. Duties of firewardens and foresters.

81-1401. (1830.1) Classification of lands as state forests. All lands at present owned by the state, and all that may hereafter be acquired by the state through escheat, exchange, purchase, grant or devise, which are principally valuable for the timber that is on them, or for the growing of timber or for watershed protection, are hereby classified and designated "state forests," and reserved for forest production and watershed protection.

History: En. Sec. 1, Ch. 179, L. 1925; amd. Sec. 1, Ch. 145, L. 1949; amd. Sec. 1, Ch. 167, L. 1951; amd. Sec. 97, Ch. 253, L. 1974.

Amendments

The 1974 amendment deleted three provisions relating to property within the boundaries of Glacier National Park. For prior law, see parent volume.

81-1401.1, 81-1401.2. Repealed.

Repeal

Sections 81-1401.1 and 81-1401.2 (Secs. 1, 2, Ch. 114, L. 1953), relating to legislative approval of fair market value, and

exchange of lands with the United States government, were repealed by Sec. 108, Ch. 253, Laws of 1974.

81-1403. (1830.3) Repealed.

Repeal

Section 81-1403 (Sec. 3, Ch. 179, L. 1925; Sec. 1, Ch. 161, L. 1949; Sec. 1, Ch. 192, L. 1953; Sec. 1, Ch. 28, L. 1955; Sec. 1, Ch. 94, L. 1957; Sec. 5, Ch. 225, L. 1963;

Sec. 39, Ch. 177, L. 1965; Sec. 9, Ch. 237, L. 1967), relating to the appointment of a state forester, was repealed by Sec. 108, Ch. 253, Laws of 1974.

81-1404. (1830.4) Sale of timber—advertising for bids—purchaser's agreement. Under the direction of the state board of land commissioners, the department of natural resources and conservation may sell the timber crop and other crops of the forests, after examination, estimate, appraisal and report, and under such rules as may be established by the board; timber proposed for sale in excess of 100,000 feet board measure shall be advertised in a paper of the county in which the timber is situated for a period of at least thirty (30) days, during which time the department of natural resources and conservation shall receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale. The department of natural resources and conservation may reject any or all bids, upon approval of the board; or it shall award the sale to the highest responsible bidder. Upon award of sale the purchaser shall execute a formal agreement, approved by the board, which describes the area on which the timber is to be cut, the approximate quantity to be cut by species, the rate for each product of each species, and it shall stipulate that all timber shall be paid for in advance of cutting, fix a date for termination of the agreement, and define rules of silviculture, cutting, utilization, scaling and slash disposal, and such other rules as in the discretion of the board are essential to the perpetuation of the state forests.

History: En. Sec. 4, Ch. 179, L. 1925; partment of natural resources and conservation" throughout the section for "state forester"; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

81-1406. (1830.6) Breach of timber sale agreement. For breach of timber sale agreement, the department of natural resources and conservation may suspend cutting or removal of the timber, and take such steps as are advisable upon advice and counsel of the attorney general to adjust the breach or to liquidate the state's claim for damages, or it may submit the case with full report as to damages sustained by the state to the attorney general for collection on the bond.

History: En. Sec. 6, Ch. 179, L. 1925; partment of natural resources and conservation" for "state forester"; and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "de-

81-1408. (1830.8) Duties concerning lumber cutting—scaling. The department of natural resources and conservation shall supervise all the management of timber before it is cut, and secure the most complete utilization of all forest products consistent with the current forest management practices. It shall instruct and supervise the cruisers, forest wardens and scalers in the conduct of their work; and fix and establish the standard practice in timber sales administration. It shall require that each merchantable log be scaled by the Scribner decimal C. log rule at the small end on the average diameter inside bark taken to the nearest inch, and that deduction be made for any apparent defect, or it shall fix and determine converting factors and units of measure for all forest products, which shall be as nearly as practical equivalent to the Scribner decimal C. log scale. Records of converting factors, units of measure and the scale of logs shall be kept as a permanent public record showing the date of scale or measurement, the designation of the scale and the name of the scaler. Where the volume of timber involved is not in excess of one million (1,000,000) board feet log scale, the department of natural resources and conservation may designate each tree to be cut and make a tree scale measurement of all trees to be sold.

History: En. Sec. 8, Ch. 179, L. 1925; partment of natural resources and conservation" for "state forester" in the first and last sentences; and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment substituted "de-

81-1409. (1830.9) Co-operation with owners and lessees. For the purpose of more adequately promoting and facilitating the co-operation, financial and otherwise, between the state and all of the public and private agencies or individuals therein, the department of natural resources and conservation may co-operate with owners or lessees of farm, range, forest, watershed or other uncultivated lands in private and public ownership for the protection from fire of the cultivated agricultural crops or natural resources existing or growing thereon; and also in the conservation and

perpetuation of such lands and resources, including the prevention of soil erosion and the regulation of stream flow.

History: En. Sec. 9, Ch. 179, L. 1925; amd. Sec. 1, Ch. 193, L. 1947; amd. Sec. 101, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department of natural resources and conservation" for "state board of forestry"; and made minor changes in phraseology.

81-1411. (1831) Duties of department of natural resources and conservation. The department of natural resources and conservation shall, under the direction and control of the state board of land commissioners, do all the field work in the selection, location, examination, appraisalment, and re-appraisalment of state timberlands. It shall do all acts required of it by the board, and under the direction of the board it has general charge of the timberlands of the state. It shall, under the supervision of the board, execute all matters pertaining to forestry within the jurisdiction of the state; have charge of all firewardens of the state and direct and aid them in their duties; direct the protection, improvement and condition of state forests; take such action as is authorized by law to prevent and extinguish forest, brush and grass fires; enforce the laws pertaining to forest and brushcover lands, and prosecute for any violation of those laws. It shall furnish notices, printed in large letters, calling attention to the danger from forest fires, and to the forest fire and trespass laws, and their penalties. These notices shall be posted by the firewarden in conspicuous places in the several counties of the state, and particularly in brush and forest-covered country, at frequent intervals along streams and lakes frequented by tourists, hunters, and fishermen, at established camping sites, and in every post office in the forested region.

History: En. Sec. 10, Ch. 147, L. 1909; amd. Sec. 2, Ch. 118, L. 1911; re-en. Sec. 1831, R. C. M. 1921; amd. Sec. 1, Ch. 218, L. 1965; amd. Sec. 34, Ch. 93, L. 1969; amd. Sec. 102, Ch. 253, L. 1974.

Amendments

The 1969 amendment substituted reporting requirements of section 82-4002 for

former provision requiring annual reports in the fourth sentence.

The 1974 amendment substituted "department of natural resources and conservation" for "state forester"; deleted a sentence requiring reports as provided in section 82-4002; and made minor changes in phraseology, punctuation and style.

81-1412. (1833) Firewardens. The department of natural resources and conservation shall appoint in such number and localities as it considers wise, public-spirited citizens to act as volunteer firewardens. Every sheriff, undersheriff, deputy sheriff, state fish and game warden, and state fish and game director is ex officio a firewarden, but may not receive any additional compensation by reason of the duties hereby imposed, and they shall be considered paid firewardens under the terms of this act. The supervisors and rangers of the federal forest lands within this state whenever they formally accept the duties and responsibilities of firewardens, may be appointed volunteer firewardens, and have all the powers given to firewardens by this act. The firewardens shall promptly report all fires to the department of natural resources and conservation, take immediate and active steps toward their extinguishment, report any violation of forest laws, and assist in apprehending and convicting offenders.

History: En. Sec. 11, Ch. 147, L. 1909; re-en. Sec. 1833, R. C. M. 1921; amd. Sec. 1, Ch. 147, L. 1955; amd. Sec. 103, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department of natural resources and conservation" for "state forester" in the first

sentence and for "state board of forestry" in the last sentence; substituted "state fish and game warden, and the state fish and game director" in the second sentence for "game warden [director], and deputy game warden [warden]"; and made minor changes in phraseology, punctuation and style.

81-1413. (1834) Powers of firewardens. All firewardens have the power of peace officers to make arrests without warrants for violations, in their presence, of any state or federal forest laws, and a firewarden is not liable for civil action for trespass committed in the discharge of his duties. A firewarden who has information which shows, with reasonable certainty, that a person has violated any provision of those forest laws, shall immediately take action against the offender, by making complaint before the proper magistrate, or by information to the proper county attorney, and shall obtain all possible evidence pertaining thereto. Failure on the part of a paid firewarden to comply with the duties prescribed in this act is a misdemeanor, and punishable by a fine of not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000), or imprisonment in the county jail for not less than ten (10) days nor more than twelve (12) months, or by both such fine and imprisonment; and upon his conviction, the district court wherein he is convicted shall immediately declare his office vacant, and notify the proper appointing power thereof.

History: En. Sec. 12, Ch. 147, L. 1909; re-en. Sec. 1834, R. C. M. 1921; amd. Sec. 104, Ch. 253, L. 1974.

ester" before "All firewardens" at the beginning of the section; and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment deleted "state for-

81-1415. (1836) Duties of firewardens and foresters. The department of natural resources and conservation and all firewardens (except volunteer wardens), under such rules as the state board of land commissioners may provide, shall protect the timber of the state, and especially the timber owned by the state, from destruction by fire, and for such purpose, in emergencies, may employ men and incur other expenses when necessary.

History: En. Sec. 14, Ch. 147, L. 1909; re-en. Sec. 1836, R. C. M. 1921; amd. Sec. 1, Ch. 220, L. 1955; amd. Sec. 105, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department of natural resources and conservation" for "state forester" and "assistant forester"; and made minor changes in phraseology.

CHAPTER 15—PORTABLE SAWMILLS ON FOREST LAND— LICENSE AND REGULATION

Section

81-1501 to 81-1504. [Transferred.]

81-1506. [Transferred.]

81-1501 to 81-1504. [Transferred.]**Compiler's Notes**

Sections 107 to 110, Ch. 253, Laws of

1974 renumbered these sections as secs. 28-802 to 28-805.

81-1505. (1839.5) Repealed.**Repeal**

Section 81-1505 (Sec. 5, Ch. 124, L. 1931), relating to the definition of a port-

able sawmill, was repealed by Sec. 108, Ch. 253, Laws of 1974.

81-1506. [Transferred.]**Compiler's Notes**

Section 111, Ch. 253, Laws of 1974 renumbered this section as sec. 28-806.

CHAPTER 16—TIMBER SALES—GENERAL PROVISIONS

Section

81-1601. Sale of timber—fees for brush disposal and timber stand improvement.

81-1604. State brand—penalty for violation.

81-1601. (1872) Sale of timber—fees for brush disposal and timber stand improvement. (1) The state board of land commissioners may sell timber on state lands, at such price per thousand feet as in its judgment is in the best interest of the state, but not otherwise; but no such sale of live timber shall be less than three dollars (\$3) per thousand feet for white pine, yellow pine, and spruce or less than one dollar and a half (\$1.50) per thousand feet for all other timber species. All timber sold or cut from state lands shall be cut and removed under such rules and regulations for the preservation of standing timber and the prevention of fires as the board prescribes; in all cases the board must require the person cutting the timber to pile and burn or otherwise dispose of the brush and slashings in such manner as may be required. Before any sale is granted, the timber shall be estimated and appraised under the direction of the department of natural resources and conservation, upon the request and subject to the approval of the board. These estimates and appraisals shall show as nearly as possible the amount and values per thousand feet of all merchantable timber, together with a statement of the situation of the timber relative to risk from fires or damage of any kind, its distance from the nearest lake, stream or railroad, and its value and position as a protection to a watershed.

(2) The board may set fees for brush disposal on state lands. The board may also establish a fee for timber stand improvement on timber cut on state lands. Such fees shall be deposited in the earmarked revenue fund to the credit of the department of natural resources and conservation.

History: Ap. p. Sec. 3560, p. 193, L. 1897; re-en. Sec. 2213, Rev. C. 1907; amd. Sec. 53, Ch. 147, L. 1909; amd. Sec. 4, Ch. 118, L. 1911; amd. Sec. 1, Ch. 26, L. 1919; re-en. Sec. 1872, R. C. M. 1921; amd. Sec. 1, Ch. 132, L. 1933; amd. Sec. 219, Ch. 147, L. 1963; amd. Sec. 82, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "department of natural resources and conservation" for "state forester" in the third sentence of subsection (1) and at the end of subsection (2); and made minor changes in style and phraseology.

81-1604. (1881) State brand—penalty for violation. The department of natural resources and conservation, under the direction of the board, shall select and designate a brand which it shall place upon all timber, logs, boards, or planks that may be seized, as provided for in this chapter. Any person, or any officer or employee of any company, association, or corporation, who removes, sells, or disposes of any property mentioned in this chapter, after the property has been seized or marked with the state brand, or who erases, defaces, cuts, or destroys any mark upon any such property, shall, upon conviction, be imprisoned in the state prison for not less than one (1) year nor more than three (3) years, and be subject to a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000).

History: En. Sec. 8, p. 49, L. 1893; re-en. Sec. 3567, Pol. C. 1895; re-en. Sec. 2220, Rev. C. 1907; re-en. Sec. 60, Ch. 147, L. 1909; re-en. Sec. 1880, R. C. M. 1921; amd. Sec. 83, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "department of natural resources and conservation" for "state forester" at the beginning of the section; and made minor changes in style and phraseology.

CHAPTER 17—OIL AND GAS ON STATE LANDS—DISPOSAL OF

- Section
- 81-1702. Area to be leased—limitations—term of leases—operating agreements.
 - 81-1702.1. Rentals—filing fee—contiguity.
 - 81-1702.2. Power to terminate lease—grounds.
 - 81-1705. Report of lessees.
 - 81-1706. Work required to hold lease—extension of time—modification of existing leases.
 - 81-1712. Disposition of royalties and other moneys.
 - 81-1716. Assignments of leases.
 - 81-1717. Removal of property of lessee at end of term—agreement with new lessee concerning property.
 - 81-1718. Surrender of lease.
 - 81-1720. State officers not to be interested in leases.
 - 81-1726. Term of lease—renewal.
 - 81-1728. Bond of lessees.
 - 81-1729. Cancellation and forfeiture of lease—notice—hearings.
 - 81-1730. Rentals—disposition of funds.
 - 81-1731. Termination and surrender of lease.

81-1702. (1882.2) Area to be leased—limitations—term of leases—operating agreements. (1) An oil or gas lease issued on state lands may not embrace more than six hundred forty (640) acres, except that any section surveyed by the United States which contains more than six hundred forty (640) acres may be included under one (1) lease. Any person, association, corporation, or municipality qualified to hold an oil or gas lease on state lands may receive from the board or take through assignment, or succession, will, judgment, decree, or otherwise through the operation of law, more than one (1) oil and gas lease to state lands, subject to such regulations and limitations as the board prescribes.

(2) All state oil and gas leases shall be granted for a primary term or period of ten (10) years, and as long thereafter as oil or gas in paying quantities is produced, on condition that all drilling, rental, and other obligations are fully kept and performed by the lessee; nothing in this section amends or repeals sections 81-1703 or 81-1706.

If oil or gas is not being produced from the leased premises at the expiration of the primary term of the lease, but the owner of the lease is then engaged in drilling on the premises for oil or gas, then the lease continues in force so long as such drilling operations are being diligently prosecuted. If oil or gas is recovered from any such well drilled or being drilled at or after the expiration of the primary term of the lease, the lease continues in force so long as oil or gas in paying quantities is produced from the leased premises.

(3) Owners of state oil and gas leases may enter into agreements with other persons, associations, firms, and corporations for drilling and other operations on the state lands under their leases; but no such operating agreements are in any way binding upon the state until filed with the board and approved by it; and no such drilling or operating agreement in any way affects the obligations of each individual leaseholder to the state.

(4) Nothing contained in this section or in prior related acts prevents the board from entering into agreements for the pooling of acreage with others for unit operations for the production of oil or gas, or both, and the apportionment of oil or gas royalties, or both, on an acreage or other equitable basis, and from modifying leases with respect to delay rentals, delay drilling penalties and royalties in accordance with such pooling agreements and such unit plans of operation; however, such agreements may not change the percentage of royalties to be paid to the state from the percentages as fixed in its leases. The board may modify existing pooling and unit agreements so as to commit the state lands included therein for as long as the unitized substance or substances for which the state lands are committed is produced from any lands in the unit.

(5) Oil or gas produced from any part of a unit in which state lands are included by virtue of a pooling agreement, are considered to be produced from the state lands therein, within the meaning of this chapter.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973.

first paragraph of subsection (2), was repealed by Sec. 116, Ch. 428, Laws 1973.

Amendments

The 1973 amendment inserted "state oil and gas" at the beginning of subsection (2); and made minor changes in style, phraseology and punctuation.

Compiler's Notes

Section 81-1703, cited at the end of the

81-1702.1. Rentals—filing fee—contiguity. (1) The minimum annual money rentals to be paid to the state for oil and gas leases issued before March 3, 1955, shall be seventy-five cents (\$.75) for each acre of land leased; however, this rental shall in no case be less than fifty dollars (\$50) a year.

(2) The annual money rentals to be paid to the state for oil and gas leases issued on and after March 3, 1955, shall be one dollar (\$1) for each acre of land leased, except that in addition to the sum of one dollar (\$1) per acre, the rental for the first year of the lease shall also include any sum in excess of one dollar (\$1) per acre offered and accepted for the first

year's rental; however, this rental shall in no case be less than fifty dollars (\$50) a year.

(3) The first year's rental shall be paid before the issuance of the lease. The rentals for each subsequent year of the lease shall be due and payable before the beginning of such subsequent year, and upon failure to make such payment the lease terminates.

(4) The lands shall be leased in as compact bodies as the form and areas of the tracts held by the state and offered for lease will permit. No lease may embrace noncontiguous subdivisions of lands unless the subdivisions are within an area comprising not more than one (1) square mile.

(5) In all cases where an oil and gas lease issued after March 3, 1955, is surrendered for cancellation before its expiration, relinquished to the state, or canceled through proceedings on the part of the state, no new lease on the lands under such lease may be issued within thirty (30) days from the date of cancellation or relinquishing. This restriction does not apply, however, in cases of bona fide assignment.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974.

Amendments

The 1971 amendment deleted the filing fee of \$5.00 for each oil and gas lease issued from the second paragraph; granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners; and made a minor change in style.

The 1973 amendment inserted subsection (1); numbered the remaining subsections; substituted "issued on and after March 3, 1955" for "hereafter made under the pro-

visions chapter 17 of Title 81, R. C. M. 1947, and acts amendatory thereto" in subsection (2); deleted from subsection (3) a first sentence providing for filing fees on issuance and assignment of leases; deleted "Such filing fee and" from the beginning of the first sentence of subsection (3); substituted "issued after March 3, 1955, is surrendered" for "hereafter issued shall be surrendered" near the beginning of subsection (5); and made minor changes in style and phraseology.

The 1974 amendment substituted "due and payable before the beginning of such subsequent year" in the second sentence of subsection (3) for "due and payable thirty (30) days before the beginning of such subsequent year."

81-1702.2. Power to terminate lease—grounds. In every oil and gas lease granted after March 3, 1955, under this chapter there shall be reserved to the board full power to declare termination of the lease at the end of the second year or any subsequent year of the primary term of the lease upon failure of the lessee to either (a) commence the drilling of a well for oil and gas upon the leased premises or (b) pay a delay drilling penalty as follows: for the sixth year of the lease one dollar and twenty-five cents (\$1.25) per acre per year, and for the remainder of the primary term of the lease an amount per acre per year as the board may, in its discretion, determine. Notice of that determination shall be given to the lessee, and if the lessee applies for a hearing thereon within ten (10) days after receipt of the notice, the determination shall become final only after such hearing has been held. This annual delay drilling penalty shall be paid each year in advance. If a well for oil and gas is commenced, the drilling of the well shall be prosecuted with due diligence and dispatch to such depth as is necessary to make a reasonable test for oil or gas. If the first well drilled is a dry hole, and if a second well is not commenced on the land covered by the lease before the next anniversary of the lease following

the completion of the well, the lease may be terminated by the board unless the lessee, on or before such anniversary, resumes the payments of penalties in the amounts provided in this section. Upon the resumption of the payment of such delay drilling penalties and their continued payment, the lease continues in force during the primary term as though there had been no interruption in the delay drilling penalty payments.

History: En. Sec. 2, Ch. 161, L. 1955; amd. Sec. 1, Ch. 251, L. 1965; amd. Sec. 86, Ch. 428, L. 1973.

"granted after March 3, 1955" for "hereafter granted" near the beginning of the section; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted

81-1702.3. Repealed.

Repeal

Section 81-1702.3 (Sec. 3, Ch. 161, L. 1955), exempting subsequent leases from

secs. 81-1703 and 81-1706, was repealed by Sec. 116, Ch. 428, Laws 1973. For present law, see sec. 81-1706 (2).

81-1702.4. Repealed.

Repeal

Section 81-1702.4 (L. 1965, Ch. 251, Sec. 2), relating to reservation of royalties to state in oil and gas leases granted by

state, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

81-1703. (1882.3) Repealed.

Repeal

Section 81-1703 (Sec. 3, Ch. 108, L. 1927; Sec. 13, Ch. 22, L. 1971), relating to rentals, filing fees, contiguity of land

leased and cancellation and renewal of leases, was repealed by Sec. 116, Ch. 428, Laws 1973.

81-1705. (1882.5) Report of lessees. On or before the last day of each month every holder of a producing oil or gas lease shall make a report to the department for the preceding calendar month on a form the department prescribes. The report shall show the amount of oil or gas produced and saved during the preceding month, the price obtained, the total amount of all sales, and any additional information as may be required, and it shall be signed by the lessee or some responsible person having knowledge thereof. The report shall be accompanied by payment of the amount due the state as royalty for the month covered by the report, unless the state's royalty is being or has been paid direct by the purchaser thereof; however, where the amount of royalty due from any lease is determined by the board to be so small as to make it uneconomical to collect monthly, the board may authorize royalty payments to be made semiannually.

History: En. Sec. 5, Ch. 108, L. 1927; amd. Sec. 2, Ch. 122, L. 1953; amd. Sec. 1, Ch. 171, L. 1963; amd. Sec. 87, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted references to the department for references to the commissioner of state lands; and made minor changes in style and phraseology.

81-1706. (1882.6) Work required to hold lease—extension of time—modification of existing leases. (1) In every oil and gas lease granted by the state there shall be reserved to the board full power to declare termination of the lease upon failure of the lessee to drill at last one well upon the leased premises (not less than six (6) inches in diameter to the

depth of at least one thousand (1,000) feet, unless oil or gas in commercial quantity and of commercial quality shall be encountered at a shallower depth) within two (2) years after the date of the lease. If oil or gas in commercial quantities is not found at the depth of one thousand (1,000) feet or less, the lessee shall continue drilling with diligence to such depth as necessary to make reasonable test for oil or gas. The board may, in its discretion, upon satisfactory showing by the lessee, extend the time for the commencement or completion of such drilling obligation from year to year, not exceeding ten (10) years after the date of the lease, upon such terms and considerations the board determines, and upon payment to the department of such penalty, if any, the board in its discretion determines, for each year beginning with the third year, payable each year in advance.

(2) This section does not apply to leases issued after March 2, 1955.

History: En. Sec. 6, Ch. 108, L. 1927; amd. Sec. 2, Ch. 171, L. 1933; amd. Sec. 88, Ch. 428, L. 1973.

Amendments

The 1973 amendment designated the first paragraph as subsection (1); substituted

references to the department for references to the commissioner of state lands and investments; deleted a second paragraph permitting modification of pre-existing leases; added subsection (2); and made numerous minor changes in style, phraseology and punctuation.

81-1709. (1882.9) Repealed.

Repeal

Section 81-1709 (Sec. 9, Ch. 108, L. 1927; Sec. 1, Ch. 186, L. 1957), relating

to bonds of lessees of state oil and gas leases, was repealed by Sec. 1, Ch. 164, Laws 1969.

81-1712. (1882.12) Disposition of royalties and other moneys. All fees, rentals, penalties, royalties, and bonuses collected for or under state oil and gas leases shall be paid to the department and credited as follows: All fees and penalties shall be credited to the state general fund; all rentals shall be credited to the income fund of the grant to which the lands under each lease belong; all moneys collected as royalties and bonuses shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs and become and forever remain an inseparable and inviolable part thereof. However, all royalties and bonuses collected from the lands forming part of the capitol building grant shall be available as income the same as all other receipts from such lands. All moneys received as rentals, royalties, and bonuses for or under leases on state lands and not held in trust for the public schools of the state, or for any state institution, shall be credited, one-half ($\frac{1}{2}$) to the state general fund and one-half ($\frac{1}{2}$) to the state permanent revenue fund.

History: En. Sec. 12, Ch. 108, L. 1927; amd. Sec. 44, Ch. 100, L. 1973; amd. Sec. 89, Ch. 428, L. 1973.

Amendments

Chapter 100, Laws of 1973, deleted "as defined by article XXI of the constitution" from the end of the section.

Chapter 428, Laws of 1973, made the same deletion as did Ch. 100; substituted "department" for "register of state lands" near the beginning of the first sentence; and made changes in phraseology, style and punctuation.

81-1713, 81-1714. (1882.13, 1882.14) Repealed.

Repeal

Sections 81-1713, 81-1714 (Secs. 13, 14, Ch. 108, L. 1927), accepting an amendment

to the Enabling Act, and relating to the correction of errors, were repealed by Sec. 116, Ch. 428, Laws 1973.

81-1716. (1882.16) Assignments of leases. The assignment of any oil and gas lease issued under this chapter, either in whole or as to subdivisions of land embracing not less than forty (40) acres covered thereby, made to an assignee qualified as provided herein, is permitted. Such assignment is not, however, binding upon the state until filed with the department and accompanied by the required fees, together with such proof of qualifications required by the board, and approved by the board or its lawful representative. The approval of any assignment so filed and supported may not be withheld in any case where the rights or interest of the state in the property assigned will not in the judgment of the board be prejudiced thereby, and the decision of the board in all cases is subject to appeal upon proper court proceedings. All other assignments of oil and gas leases issued under this chapter or interests therein are subject to approval by the board and are binding upon the state in the discretion of the board.

History: En. Sec. 16, Ch. 108, L. 1927; amd. Sec. 90, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "filed with the department" for "filed in the

office of the register of state lands" in the second sentence; deleted "and bond" following "required fees" in the second sentence; and made minor changes in style and phraseology.

81-1717. (1882.17) Removal of property of lessee at end of term—agreement with new lessee concerning property. (1) Upon the termination for any cause of any lease issued under this chapter, the former lessee has six (6) months after the date of the termination to remove all machinery, fixtures, improvements, buildings and equipment belonging to him on the premises, except for casing in the wells and other equipment or apparatus necessary for the preservation of any oil or gas well or wells. As to such casing, equipment, and apparatus, any succeeding lessee, or in the event there is no succeeding lessee, the state, wishing to have such property left upon the premises, shall pay the reasonable value thereof to the former lessee. If the succeeding lessee or the board is unable to agree with the former lessee upon the reasonable cash value of such casing, equipment, and apparatus, the succeeding lessee or the state, as the case may be, shall pay in cash to the former lessee a sum fixed as a reasonable price by a board of three (3) appraisers, one (1) of whom shall be chosen by the successful bidder, one (1) by the former lessee, and the third by the two (2) so chosen. Its appraisal shall be reported to the respective parties in writing, and is final and conclusive.

(2) The former lessee may remain in possession and manage the land and property formerly covered by his lease until the value of the casing, equipment, and apparatus which the succeeding lessee or the state desires to have left upon the premises, is fixed, in the manner provided in this section, and has been paid to him in cash. During the time the former lessee remains in such possession, he may retain the same share of the products of the premises as inured to him during the term of his lease. Should the state or other bidder not desire any of the lessee's property as provided in this section, the lessee shall properly plug all wells and remove all of his property from the lands.

History: En. Sec. 17, Ch. 108, L. 1927;
amd. Sec. 91, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style, phraseology and punctuation.

81-1718. (1882.18) Surrender of lease. The lessee under any oil and gas lease granted by the state may at the termination of any rental year, by giving to the department 30 days' previous notice in writing, surrender and relinquish the lease to the state in whole or as to any legal subdivision of the lands covered thereby and be discharged from any obligation not yet accrued as to lands so surrendered and relinquished, without prejudice to the continuance of the lease as to lands not surrendered or relinquished.

History: En. Sec. 18, Ch. 108, L. 1927;
amd. Sec. 92, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment" for "register of state lands"; deleted a second sentence permitting exchange of pre-existing leases; and made minor changes in style and phraseology.

81-1720. (1882.20) State officers not to be interested in leases. It is unlawful for any officer or employee of any agency of the executive department of state government who is required to inspect or examine oil or gas wells or otherwise to gather field information in regard to prospecting for oil and gas or the production thereof, to lease or to become interested in any manner in any oil or gas lease on state lands.

History: En. Sec. 20, Ch. 108, L. 1927;
amd. Sec. 4, Ch. 171, L. 1933; amd. Sec. 93,
Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "officer or employee of any agency of the execu-

tive department" for "member of the state board of land commissioners, for any of the officers or employees of the department of state lands and investments, and for any officer or employee of any other department or office"; and made minor changes in phraseology and punctuation.

81-1724. (1882.24) Repealed.

Repeal

Section 81-1724 (Sec. 24, Ch. 108, L.

1927), repealing conflicting law, was repealed by Sec. 116, Ch. 428, Laws 1973.

81-1726. Term of lease—renewal. All leases issued under section 81-1725 may be granted for a period not exceeding twenty (20) years, and the lessee has a preferential right to renew the lease for an additional period not exceeding twenty (20) years subject to any terms and conditions the board imposes.

History: En. Sec. 2, Ch. 213, L. 1955;
amd. Sec. 94, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "under section 81-1725" for "hereunder"; and made minor changes in style and phraseology.

81-1728. Bond of lessees. A lessee under section 81-1725 shall furnish bond to the state in a form prescribed by the board and in an amount adequate to indemnify the state against loss, damage, or detriment by reason of failure of the lessee to fully discharge the obligations contained in any lease. No bond in excess of twenty thousand dollars (\$20,000) is required under any one (1) lease.

History: En. Sec. 4, Ch. 213, L. 1955;
amd. Sec. 95, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "A lessee under section 81-1725 shall furnish"

for "The state board of land commissioners shall require lessees, to furnish" at the beginning of the section; substituted "a form prescribed by the board" for "sum and

substance prescribed by law or by regulations of the board"; and made minor changes in style and phraseology.

81-1729. Cancellation and forfeiture of lease—notice—hearings. All leases granted under section 81-1725 shall provide for their forfeiture and cancellation upon failure of the lessee to fully discharge the obligations provided therein, after written notice from the department and reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice concerning which the lessee is in default. The board may order and hold hearings on any matter or question involving leases issued under section 81-1725, under such rules and regulations as it adopts; any lessee, upon application, is entitled to a hearing on any notice or demand of the department before any lease is granted, forfeited, or canceled by the board.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted references to section 81-1725 for references to "this act" in two places; substituted "the

department" for "the state" following "after written notice from" in the first sentence; substituted "department" for "board" near the end of the section; and made minor changes in style and phraseology.

81-1730. Rentals—disposition of funds. All rentals collected for or under leases issued under section 81-1725 shall be paid to the department and credited in the same manner as rentals from oil and gas leases.

History: En. Sec. 6, Ch. 213, L. 1955; amd. Sec. 97, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "sec-

tion 81-1725" for "the provisions of this act"; substituted "department" for "commissioner of state lands and investments"; and made a minor change in phraseology.

81-1731. Termination and surrender of lease. (1) The lessee may, at the termination of any rental year, by giving to the department thirty (30) days' previous notice in writing, surrender and relinquish such lease to the state and be thereupon discharged from any obligation not yet accrued.

(2) Upon the termination for any cause of any lease issued under section 81-1725, the lessee has six (6) months after the date of the termination within which to remove all machinery, fixtures, improvements, buildings, and equipment belonging to it upon the premises.

History: En. Sec. 7, Ch. 213, L. 1955; amd. Sec. 98, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "department" for

"commissioner of state lands and investments" in subsection (1); substituted "under section 81-1725" for "pursuant to this act" at the beginning of subsection (2); and made minor changes in style and phraseology.

CHAPTER 20—WATER FOR STATE LANDS

Section

81-2009. [Transferred.]

81-2018. Appropriation of water by state.

81-2009. [Transferred.]**Compiler's Notes**

Section 112, Ch. 253, Laws of 1974 re-numbered this section as sec. 89-142.

81-2018. (1965) Appropriation of water by state. The state board of land commissioners may, through the department of natural resources and conservation, at its discretion, appropriate any available waters for use upon state lands, and authorize the construction of irrigation works for these lands. The appropriation shall be made in the same way and under the same laws as those governing the appropriation of water by individuals.

History: En. Sec. 2, Ch. 85, L. 1905; re-en. Sec. 2254, Rev. C. 1907; re-en. Sec. 1965, R. C. M. 1921; amd. Sec. 3, Ch. 280, L. 1965; amd. Sec. 113, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of natural resources and conservation" for "state water conservation board" in the first sentence; deleted from the last sentence "and said water right laws are hereby made available and may be applied by said board or its agent"; and made minor changes in phraseology.

CHAPTER 22—EXCHANGE OF TIMBERED, CUT OR BURNED OVER LANDS**Section**

- 81-2201. Exchange of timbered, cut over or burned over lands.
- 81-2202. Department of natural resources and conservation to investigate.
- 81-2203. Investigation and findings concerning exchange of land.
- 81-2204. Hearing concerning exchange—notice—final order.
- 81-2205. Rules and regulations shall be made by board.

81-2201. (1995.1) Exchange of timbered, cut over or burned over lands. The board of land commissioners may accept on behalf of the state title in fee simple to any lands, timbered or from which the timber has been cut or burned, and in exchange therefor may convey not to exceed an equal value of similar state land. However, no such exchange may be made except that which in the opinion of the board will benefit the public interest. For the purpose of such an exchange, all state lands, including those referred to in section 81-1401 and section 81-903, are subject to be offered for such exchange, and any restrictions against their sale or disposal are, for the purpose of such an exchange, released.

History: En. Sec. 1, Ch. 180, L. 1931; amd. Sec. 99, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style, phraseology and punctuation.

81-2202. (1995.2) Department of natural resources and conservation to investigate. When a proposal for an exchange is made, and the owners of the respective tracts involved seem agreeable to negotiate such exchanges, the proposal shall be referred to the department of natural resources and conservation, and that department shall thoroughly investigate all the lands involved in the proposal and estimate the value of all of the lands and consider every factor in connection with the proposal as may affect the public interest.

History: En. Sec. 2, Ch. 180, L. 1931; amd. Sec. 100, Ch. 428, L. 1973.

partment of natural resources and conservation" for "state forester"; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted "de-

81-2203. (1995.3) Investigation and findings concerning exchange of land. The department of natural resources and conservation shall, as soon as it concludes its investigation thereof, report to the board the facts disclosed by its investigation and include in its report a recommendation concerning the proposal including its reasons therefor in writing. If the board, after considering the report and recommendation and making such further investigation as it considers advisable, is of the opinion that the exchange is in the public interest, the board shall consider the entire matter and make findings and conclusions concerning the proposal and make an order rejecting the proposal and dismiss the same, or if in the judgment of the board the exchange is in the public interest and should be made, the order shall so state and shall contain an accurate description of all lands to be exchanged.

History: En. Sec. 3, Ch. 180, L. 1931; amd. Sec. 101, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "The department of natural resources and con-

servation" for "the state forester" at the beginning of the section; deleted "when-ever any proposal of exchange hereunder has been referred to him" before "shall" in the first sentence; and made minor changes in style and phraseology.

81-2204. (1995.4) Hearing concerning exchange—notice—final order. (1) If the state board approves a proposal for exchange, the department of state lands shall publish at least once in some newspaper of general circulation in each county in which any of the lands involved are located, a notice stating in general terms the proposal and describing the lands involved and ownership thereof. The notice shall fix a day not less than twenty (20) and not more than sixty (60) days from the date of the first publication at which the board will hear objections to the proposed exchange and at which any person, firm, or corporation may appear in person or by representative and be heard.

(2) Within ten (10) days after the conclusion of the hearing the board shall make a final order describing the terms of the proposal for the exchange of the land involved and shall either dismiss the proposal as not being in the public interest or direct the proper officers to proceed to complete the exchange.

History: En. Sec. 4, Ch. 180, L. 1931; amd. Sec. 102, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the sub-

sections; substituted references to the department of state lands for references to the commissioner of state lands; and made minor changes in style and phraseology.

81-2205. (1995.5) Rules and regulations shall be made by board. The board shall adopt and promulgate such rules, regulations, and methods of procedure affecting or touching the exchanges of lands under this chapter, as in its judgment seems advisable to the end that the public interests may be conserved.

History: En. Sec. 5, Ch. 180, L. 1931;
amd. Sec. 103, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style and phraseology.

CHAPTER 23—CERTAIN STREAM AND LAKE BEDS AND
ISLANDS PROPERTY OF STATE

Section

81-2302. Administration of lands by the state of Montana.

81-2303. Survey of lands.

81-2305. Determining title to stream beds, etc.

81-2302. Administration of lands by the state of Montana. The board shall lease or sell these lands in the same manner as other school lands of the state are leased and sold. The board may sell or lease these lands without having them surveyed, unless the board considers it to be to the best interests of the state to have the lands surveyed as in section 81-2303. The proceeds from the leasing and sale of such lands shall be disposed of in the same manner as disposition is made of the proceeds from the leasing and sale of school lands of the state.

History: En. Sec. 2, Ch. 36, L. 1937;
amd. Sec. 104, Ch. 428, L. 1973.

tion 81-2303" for "hereinafter directed" at the end of the second sentence; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted "in sec-

81-2303. Survey of lands. If the board considers it necessary that any of the lands mentioned in section 81-2301 be surveyed, it shall have the lands surveyed by the county surveyor of the county in which the lands are located. If there is no county surveyor, or if the county surveyor is unable to make the survey, or if the best interests of the state require, the board shall appoint a qualified surveyor to make the surveys, and the county surveyor, or other surveyor appointed shall make an actual survey thereof establishing four (4) corners of every quarter section and connecting the same with a United States survey, and within thirty (30) days after such survey file with the county clerk and recorder of that county a copy under oath of his field notes and plat and a duly certified copy of his field notes and plat with the department. For the services required in connection with the survey the county surveyor or other surveyor appointed is entitled to fees as prescribed in section 25-235. Such fees shall be paid in the same manner as other expenses of the department.

History: En. Sec. 3, Ch. 36, L. 1937;
amd. Sec. 105, Ch. 428, L. 1973.

partment" for "commissioner of state lands and investments" at the end of the second sentence; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted "de-

81-2304. Repealed.

Repeal

Section 81-2304 (Sec. 3, Ch. 36, L. 1937), confirming prior leases and sales of lands,

was repealed by Sec. 116, Ch. 428, Laws 1973.

81-2305. Determining title to stream beds, etc. The board may take all proper proceedings for the purpose of determining the title to the beds

of lakes and other bodies of water and of streams within the state, and to that end may bring or defend suits or other proceedings in court, or before other proper tribunals.

History: En. Sec. 14, Ch. 148, L. 1937;
Sec. 81-614, R. C. M. 1947; redes. 81-2305
and amd. by Sec. 46, Ch. 428, L. 1973.

Amendments

The 1973 amendment renumbered this section and made minor changes in style and phraseology.

CHAPTER 24—DEVELOPMENT OF STATE LAND RESOURCES

Section

- 81-2401. Policy of state.
- 81-2402. Definition of terms.
- 81-2403. Development account in earmarked revenue fund—purposes for which used.
- 81-2404. Restriction on use of income from school and institutional lands.
- 81-2405. Deductions from income for development account—maximum percentage.
- 81-2406. Crediting of deductions from land income.
- 81-2407. Investment of moneys in development account.
- 81-2408. Rules and regulations.

81-2401. Policy of state. It is in the best interest and to the great advantage of the state of Montana to seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the university system and other institutions benefiting therefrom and that in so doing the economy of the local community as well as the state is benefited as a result of the impact of such development.

History: En. Sec. 1, Ch. 295, L. 1967.

Title of Act

An act relating to lands owned by the state of Montana; creating a resource development account in the earmarked revenue fund for the purpose of developing state-owned lands to increase the

revenue therefrom for the support of the common schools and other institutions and objects for which the lands are held in trust; and authorizing allowances from the income from the lands for the resource development account in the earmarked revenue fund.

81-2402. Definition of terms. Unless the context requires otherwise, in this chapter:

(1) "Account" means the resource development account in the earmarked revenue fund.

(2) "Income" means all proceeds received for the use of state land except revenues required by law to be placed in the Montana trust and legacy fund.

History: En. Sec. 2, Ch. 295, L. 1967;
amd. Sec. 106, Ch. 428, L. 1973.

divisions; deleted definitions of "department" and "board"; and made a minor change in phraseology.

Amendments

The 1973 amendment numbered the sub-

81-2403. Development account in earmarked revenue fund—purposes for which used. A resource development account in the earmarked revenue fund in the state treasury is created to be used solely for the purpose of investing in the improvement and development of state lands acquired by grant or foreclosure, in order to increase the revenue to be derived therefrom for common school support and support of the other entities, institu-

tions and objects for which the lands are held in trust. The developments contemplated may include those projects that will develop or conserve the various state land resources including: water, both surface and underground, grazing land, agricultural land and timberland to the benefit of the state. They may also include expenses necessary to perfect title to lands claimed by the state which are suitable for development and other expenses or costs which in the judgment of the board of land commissioners are desirable or necessary in order to develop or increase the value of the land or the revenue therefrom. Appropriations from the account shall be expended for no other purposes.

History: En. Sec. 3, Ch. 295, L. 1967;
amd. Sec. 107, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style and phraseology.

81-2404. Restriction on use of income from school and institutional lands. Moneys in the account derived from the income from public school lands, university lands, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands, shall be expended by the department of state lands solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust; provided, however, that if the board determines that public lands in a trust may be developed and moneys in the account from that trust are insufficient to defray the necessary costs and expenses incurred, the board may transfer sufficient moneys from other trusts in the account. Trust accounts from which money is transferred shall be reimbursed by a method approved by the board.

History: En. Sec. 4, Ch. 295, L. 1967;
amd. Sec. 1, Ch. 180, L. 1973; amd. Sec.
108, Ch. 428, L. 1973.

section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 180 and once by Ch. 428. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the changes do not appear to conflict the compiler has made a composite

Amendments

Chapter 180, Laws of 1973, added the proviso to the first sentence; and added the second sentence.

Chapter 428, Laws of 1973, inserted "of state lands" following "shall be expended by the department" in the first sentence.

81-2405. Deductions from income for development account—maximum percentage. The board shall determine the amount or percentage of income, not to exceed two and one-half per cent (2½%) which is necessary to achieve the purposes of this chapter, and shall provide by rule for deductions of that amount or percentage from the income which is secured from the lands by the department for the trusts benefited by this chapter.

History: En. Sec. 5, Ch. 295, L. 1967;
amd. Sec. 109, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "chapter" for "act" in the middle and at the end of this section.

81-2406. Crediting of deductions from land income. All deductions from gross proceeds made in accordance with section 81-2405 shall be paid into the account, and the balance of the proceeds shall be paid into the state treasury to the credit of the proper account.

History: En. Sec. 6, Ch. 295, L. 1967; amd. Sec. 110, Ch. 428, L. 1973.

Amendments

The 1973 amendment deleted "not af-

fectured hereby" following "balance of the proceeds"; and made minor changes in style, phraseology and punctuation.

81-2407. Investment of moneys in development account. The board of investments shall invest the moneys in the resource development account in safe interest-bearing securities for the benefit of the account.

History: En. Sec. 7, Ch. 295, L. 1967; amd. Sec. 111, Ch. 428, L. 1973.

Amendments

The 1973 amendment inserted "of investments" following "The board."

81-2408. Rules and regulations. The board shall adopt such rules as it considers necessary and proper for the purpose of carrying out the provisions of this chapter.

History: En. Sec. 8, Ch. 295, L. 1967; amd. Sec. 112, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "chapter" for "act"; and made a minor change in phraseology.

"It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Separability Clause

Section 9 of Ch. 295, Laws 1967 read

CHAPTER 25—PRESERVATION OF ANTIQUITIES

Section

- 81-2501. Short title.
- 81-2502. Purpose of act.
- 81-2503. Definitions.
- 81-2504. Registration of sites and objects on state land—protection.
- 81-2505. Permit to excavate, remove or restore registered site or object.
- 81-2506. Distribution of collections—loans only.
- 81-2507. State historical register.
- 81-2508. Co-operative agreements with private owners.
- 81-2509. Co-operation with governmental units.
- 81-2510. Injunction to prevent waste, destruction and removal—protection program.
- 81-2511. Violation as misdemeanor—penalty.
- 81-2512. Report of discovered sites or objects—preservation.
- 81-2513. Advisory council.
- 81-2514. Act controlling.

81-2501. Short title. This act shall be known as the "State Antiquities Act."

History: En. Sec. 1, Ch. 502, L. 1973.

Title of Act

An act providnig for the identification, acquisition, restoration, enhancement, preservation and administration of historic, paleontological, archaeological, and cultural sites and objects, and providing for

their use and enjoyment by the people; providing for a permit system for excavation of sites; providing penalties for violation of this act; providing that if other laws conflict with this act that this act shall control; and providing an effective date.

81-2502. Purpose of act. The purpose of this act is to provide a method of identification, acquisition, restoration, enhancement, preservation, conservation and administration of the historic, archaeological, paleontological,

scientific, and cultural sites and objects of the state of Montana, and for their use and enjoyment by the people, and for the people's health and welfare.

History: En. Sec. 2, Ch. 502, L. 1973.

81-2503. Definitions. As used in this act:

- (1) "Department" means the state fish and game department of the state of Montana.
- (2) "Society" means the Montana historical society.
- (3) "Board" means the state board of land commissioners.
- (4) "Historical" means after the advent of white man into Montana.
- (5) "Prehistorical" means before the advent of white man into Montana.
- (6) "Paleontological" means noncultural prehistorical material of a geological nature such as fossilized plants and animals.
- (7) "Site" means any historic, prehistoric, archaeologic, paleontologic, scientific, or cultural site upon lands subject to this act.
- (8) "Object" means any historic, prehistoric, archaeologic, paleontologic, scientific or cultural object or cluster of objects or materials, buildings, structures, or combinations thereof.
- (9) "Registered site" means any site registered by the department as provided in this act or covered by co-operative agreement under section 8 [81-2508] of this act.
- (10) "Registered objects" mean any object registered by the department as provided in this act or covered by co-operative agreement under section 8 [81-2508] of this act.
- (11) "Person" means any individual, partnership, association, society, institute, corporation or the agents thereof; the singular includes the plural.

History: En. Sec. 3, Ch. 502, L. 1973.

81-2504. Registration of sites and objects on state land — protection.

The board is authorized on the recommendation of the department and society to designate for registration by the department sites and objects situated on land under the control of the state of Montana. The board may withdraw or reserve, at any time, sufficient state land administered by the board as may be necessary for the proper care and management of such sites and objects. No state land may be sold nor any development shall be allowed which will disturb the registered site or registered object unless it is protected or excavated in accordance with this act. The use of state land for the care and management of such sites and objects is hereby declared by the legislature to be a worthy object of the trust as specified in section 81-103. The board is authorized to take adequate steps to protect such sites and objects.

History: En. Sec. 4, Ch. 502, L. 1973.

81-2505. Permit to excavate, remove or restore registered site or object.

No person may excavate, remove or restore any registered site or registered object without first obtaining a permit from the department. Said permits are to be granted only after careful consideration of the application for a

permit, and be subject to the strict compliance with the following guidelines:

(a) Permits may be granted only for work to be undertaken by reputable museums, universities, colleges, or other historical, scientific or educational institutions, societies or persons with a view toward dissemination of knowledge about cultural properties, provided no such permit shall be granted unless the department is satisfied that the applicant or applicants possess the necessary qualifications to guarantee the proper excavation of those sites and objects which may add substantially to man's knowledge about Montana and its antiquities.

(b) The permit must specify that a summary report of such investigations, containing relevant maps, documents, drawings and photographs be submitted to the department which shall in turn submit the report to an appropriate repository. The department shall determine the appropriate time period allowable between all work undertaken, and submission of the summary report.

(c) Permits will be preferentially granted to resident persons unless in the event that a state person is unavailable, unqualified, or uninterested in the work proposed for investigation. In the event that a permit is granted to a nonstate person, there must be provision that removed objects may not leave or must revert to the state of Montana, provided that all specimens so collected shall be and remain the property of the state of Montana, and provided further that the department and the society may give permission for the loan of such materials for scientific or educational purposes.

History: En. Sec. 5, Ch. 502, L. 1973.

81-2506. Distribution of collections—loans only. The department and the society shall supervise the distribution of all collections made under the provisions of this act and shall distribute material from such collections on loan only.

History: En. Sec. 6, Ch. 502, L. 1973.

81-2507. State historical register. The department is authorized and directed to compile and keep a register of all registered sites and registered objects. This register shall be known as the state historical register.

History: En. Sec. 7, Ch. 502, L. 1973.

81-2508. Co-operative agreements with private owners. The department is authorized to enter into co-operative agreements with private land-owners or the owners of objects to preserve, mark, maintain, excavate, or otherwise deal with such sites and objects upon such terms as may be agreed upon by the department and such private owners. The co-operative agreements may contain a clause that the sites and objects shall be registered under this act, and also a provision that the state of Montana shall hold the owner harmless for any liability that may occur while the property is under the control of the state of Montana.

History: En. Sec. 8, Ch. 502, L. 1973.

81-2509. Co-operation with governmental units. The department is authorized and directed to co-operate with all federal, state and local government agencies, in the identification, acquisition, restoration, enhancement, preservation and administration of all such sites and objects for the use and enjoyment of the people, and for the purpose of exhibition and interpretation of the history and culture of the state of Montana.

History: En. Sec. 9, Ch. 502, L. 1973.

81-2510. Injunction to prevent waste, destruction and removal—protection program. The department is authorized and directed to apply to any district court of the state of Montana for a writ of injunction to prevent the waste, removal and destruction of any such registered site or registered object. The department shall not be required to give any bond in such application. Upon hearing of the petition for injunction, the court may restrain waste, removal or destruction upon said site, or of such object for a period of one (1) year. The court may also provide in its order that during such period the department shall present to the parties involved a program for the protection, preservation, restoration and maintenance of the registered site or registered objects.

History: En. Sec. 10, Ch. 502, L. 1973.

81-2511. Violation as misdemeanor—penalty. Any person who shall willfully injure, remove or damage any registered site or object thereon without obtaining a permit or shall violate any of the regulations made by the department relating to state parks, historical, paleontological or prehistoric sites, buildings, structures, monuments or objects, shall be guilty of a misdemeanor and shall upon conviction be fined not more than one thousand dollars (\$1,000), or be imprisoned in the county jail for not more than six (6) months, or both such fine and imprisonment.

History: En. Sec. 11, Ch. 502, L. 1973.

81-2512. Report of discovered sites or objects—preservation. Any person conducting any activities, including survey, excavation or construction who discovers on any lands owned, leased or controlled by this state or any agency thereof, any object or objects as defined in this act, shall promptly report to the department the existence of any such site or object discovered in the course of such survey, excavation or construction, and shall take all reasonable steps to secure its preservation.

History: En. Sec. 12, Ch. 502, L. 1973.

81-2513. Advisory council. The governor may appoint an advisory council from properly qualified persons in the fields of anthropology, archaeology, paleontology, and history and other related disciplines to advise and consult with the department and the board relating to all matters of Montana's antiquities.

History: En. Sec. 13, Ch. 502, L. 1973.

81-2514. Act controlling. In so far as any of the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.

History: En. Sec. 14, Ch. 502, L. 1973.

Effective Date

Section 15 of Ch. 502, Laws 1973 pro-

vided the act should be in effect from and after its passage and approval. Approved April 2, 1973.

CHAPTER 26—LEASE OF GEOTHERMAL RESOURCES

Section

- 81-2601. Empowering the state board of land commissioners to lease.
- 81-2602. Definitions.
- 81-2603. Rules and regulations.
- 81-2604. Provisions of the lease.
- 81-2605. Royalties and rentals.
- 81-2606. Bonds to the state.
- 81-2607. Compensation to surface lessee.
- 81-2608. Compensation for improvements.
- 81-2609. Arbitrators to fix value of improvements—appeal.
- 81-2610. Disposition of royalties and other receipts.
- 81-2611. Application for water right—issuance of right.
- 81-2612. Conflicting leases.
- 81-2613. Severability clause.

81-2601. Empowering the state board of land commissioners to lease.

The board of land commissioners may lease state-owned lands, including the beds of navigable streams and the beds of navigable bodies of water, to persons, associations, or corporations for prospecting, exploration, well construction, and the production of geothermal resources.

History: En. 81-2601 by Sec. 1, Ch. 111, L. 1974.

Title of Act

An act to empower the board of land commissioners to lease geothermal resources on state lands.

81-2602. Definitions. Unless the context requires otherwise in this act:

(1) "Geothermal resources" means the natural heat energy of the earth, including the energy, in whatever form, which may be found in any position and at any depth below the surface of the earth, either present in, resulting from, created by, or which may be extracted from, such natural heat, and all minerals in solution or other products obtained from the material medium of any geothermal resource. Geothermal resources are *sui generis*, being neither a mineral resource nor a water resource, but they are closely related to and possibly affecting and affected by water resources in many instances. No right to seek, obtain, or use geothermal resources has passed or shall pass with any existing or future lease of state or school lands.

(2) "Board" means the board of land commissioners.

(3) "Department" means the department of state lands provided for in Title 82A, chapter 11.

(4) "Geothermal development" means any of the operations or facilities necessary for the production of geothermal resources.

History: En. 81-2602 by Sec. 2, Ch. 111, L. 1974.

81-2603. Rules and regulations. The board of land commissioners shall adopt rules governing the issuance of geothermal resource leases and the

conduct of all geothermal operations. The board may also require the applicant for a geothermal lease to pay an application fee.

History: En. 81-2603 by Sec. 3, Ch. 111, L. 1974.

81-2604. Provisions of the lease. (1) A lease issued by the board gives the lessee, so long as he complies with the terms and conditions of the lease, the exclusive right of possession of the lands or interests leased, subject to conditions contained in the lease.

(2) In every geothermal resource lease granted there is reserved to this state the right to sell, lease or otherwise dispose of the surface of the lands covered thereby subject to the rights and privileges granted the lessee under the terms of the lease.

(3) The term of each lease shall be for a primary term of ten (10) years and for so long thereafter as geothermal resources in paying quantities are produced, provided that all conditions and terms of the lease are fully performed by the lessee.

If geothermal resources are not being produced from the leased premises at the expiration of the primary term of the lease, but the owner of the lease is then engaged in drilling on the premises for geothermal resources, then the lease term shall be extended for so long as the drilling operations are diligently continued. If geothermal resources are recovered from any well drilled after the expiration of the primary term, the lease shall continue in force so long as geothermal resources in paying quantities are produced from the leased premises.

(4) Lessees may enter into agreements with other persons, associations, firms and corporations for drilling and other operations on state lands, but no such operating agreements shall be binding upon the state until filed with the department and approved by the board. No drilling or operating agreement may affect the obligations of each individual leaseholder to the state.

(5) Nothing contained in this act or other related acts shall prevent the board of land commissioners from entering into agreements for the pooling of acreage for unit operations for the production of geothermal resources and apportionment of geothermal royalties on an acreage or other equitable basis, or from modifying the royalty provisions of existing leases and all subsequent leases in accordance with pooling agreements and unit plans of operation. No agreement may be entered into which changes then the percentage of royalties to be paid to the state from the percentages fixed in its leases.

(6) Geothermal resources produced from any part of a unit in which state lands are included by virtue of a pooling agreement shall be considered to be produced from the state lands therein.

(7) Every lease shall specify the rental and royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a specified time, remove property placed on the leased lands upon the termination of the lease by forfeiture or by lapse of time. Furthermore, the lease may contain other provisions the board and the lessee agree upon, provided that the additional terms are not inconsistent with this chapter.

The board may exercise business discretion in entering into leases under this chapter.

History: En. 81-2604 by Sec. 4, Ch. 111,
L. 1974.

81-2605. Royalties and rentals. Geothermal leases shall be issued at an annual rental of not less than one dollar (\$1) per acre, payable in advance and/or a royalty which shall not be less than ten per cent (10%) of the amount or value of steam, or other forms of heat or energy, derived from the production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee and not more than five per cent (5%) of any by-product derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee.

History: En. 81-2605 by Sec. 5, Ch. 111,
L. 1974.

81-2606. Bonds to the state. The board may, at any time prior to the execution and delivery of a geothermal lease, or at any time during the life of the lease, require a lessee to file with the department a bond to protect the rights of the state. The bonds shall be in form and amount prescribed by the board. The board may at any time require new or additional bonds if the interests of the state will not adequately be protected by the bond previously filed.

History: En. 81-2606 by Sec. 6, Ch. 111,
L. 1974.

81-2607. Compensation to surface lessee. The lessee of any geothermal lease shall compensate the surface lessee for any damage to the surface or leasehold interest caused as a result of the geothermal lease. The board may require the geothermal lessee to post a bond, in an amount to be set by the board, to insure the payment of damages to any surface lessee. If the surface lessee and the geothermal lessee disagree as to the reasonable amount of surface damage, damage shall be ascertained in the same manner as prescribed in section 81-2609.

History: En. 81-2607 by Sec. 7, Ch. 111,
L. 1974.

81-2608. Compensation for improvements. A geothermal lessee of state lands has the right to place upon the leased lands a reasonable amount of improvements, provided that such improvements are directly related to the purpose of the lease. Whenever another person becomes the geothermal lessee, he shall pay the former lessee the reasonable value of such improvements at the time the new lessee takes possession thereof.

In determining the value of these improvements the original cost, the present condition, and the suitability of the improvements for the uses ordinarily made of geothermal resources shall be considered.

The former lessee may, however, remove or dispose of the movable improvements from the land within sixty (60) days from the expiration of his lease except for casing the well and other equipment necessary for the pres-

ervation of any geothermal well. If not removed within sixty (60) days, improvements shall become the property of the state unless the board shall grant additional time for the removal thereof. Before a lease is issued to the new lessee he shall show that he has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under section 81-2609, or that he has offered to pay the value of the improvements as so fixed and determined, or that the former lessee elects to remove the improvements.

History: En. 81-2608 by Sec. 8, Ch. 111,
L. 1974.

81-2609. Arbitrators to fix value of improvements—appeal. If the owner of any improvements on state lands of the type authorized by law at the time they were placed thereon desires to sell these improvements to the new lessee, and they are unable to agree on the value thereof, the value shall be ascertained and fixed by three (3) arbitrators, one (1) of whom shall be appointed by the owner of the improvements, one (1) by the new lessee and the third by the two (2) arbitrators so appointed. The reasonable compensation that the arbitrators may fix shall be paid in equal shares by the owner of the improvements and the new lessee. The value of the improvements so ascertained and fixed is binding on both parties. If either party is dissatisfied with the valuation so fixed, he may within ten (10) days appeal from their decision to the department which shall examine the improvements and make the final decision as to the value of the improvements. The department shall apportion the actual cost of the re-examination to the owner and the new lessee as justice may require. The value of the improvements shall be ascertained and fixed as provided in section 81-2608 of this chapter.

History: En. 81-2609 by Sec. 9, Ch. 111,
L. 1974.

81-2610. Disposition of royalties and other receipts. The department shall credit fees collected under geothermal leases to the general fund; all rentals, penalties and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong; all moneys collected as royalties shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs.

History: En. 81-2610 by Sec. 10, Ch.
111, L. 1974.

81-2611. Application for water right—issuance of right. If any geothermal development located on state land requires the utilization of water, the lessee may at any time prior to one (1) year before the expiration of his lease, make application to the board of land commissioners for permission to secure a water right to the land under his lease. Such application shall be in writing, show the permanency of the water supply, and the estimated cost of utilizing such water resources. If the proposed plan meets with the approval of the board, permission shall be granted to the lessee to secure the desired water right for the land. Such right shall be secured in accordance with Title 89, chapter 8, R. C. M. 1947, and shall be filed in

the name of the state of Montana. Existing water rights purchased by the geothermal lessee shall be the property of the lessee.

History: En. 81-2611 by Sec. 11, Ch. 111, L. 1974.

81-2612. Conflicting leases. Where there are conflicting leases, including but not limited to geothermal, coal, mineral and oil and gas leases, embracing the same land, the person who first was issued a lease shall be entitled to priority of rights, provided however that the exercise of this priority shall not interfere with actual production from the lease as determined by the board.

History: En. 81-2612 by Sec. 12, Ch. 111, L. 1974.

81-2613. Severability clause. If any section, clause, paragraph, or provision of this act shall be found invalid by a court of competent jurisdiction, it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section, paragraph or clause and the act as a whole shall not be declared invalid by reason of the fact that one (1) or more sections, clauses, sentences, paragraphs, or parts may have been found invalid by any court.

History: En. 81-2613 by Sec. 13, Ch. 111, L. 1974.

CHAPTER 27—NATURAL AREAS ACT

Section

- 81-2701. Title.
- 81-2702. Legislative intent.
- 81-2703. Definitions.
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- 81-2711. Consultation with interested parties—proceedings and files to be open.
- 81-2712. When more restrictive provisions to apply.
- 81-2713. Separability.

81-2701. Title. This act shall be known and may be cited as the “Montana Natural Areas Act of 1974.”

History: En. 81-2701 by Sec. 1, Ch. 254, L. 1974.

natural and potentially natural areas in the state and to provide for the protection of these areas.

Title of Act

An act to acknowledge the existence of

81-2702. Legislative intent. The legislative assembly finds that in the expanses of Montana there are natural areas possessing significant scenic, educational, scientific, biological, and/or geological values, or areas possessing these characteristics to a degree promising their restoration to a

natural state; that since the development of these areas is an irreversible commitment of a finite and diminishing resource of fundamental importance, the remaining areas should be preserved for the benefit of this and future generations; and that currently there are no regulations promulgated by the state or local governments to ensure adequate protection for natural areas. It is the intention of the legislative assembly to establish a system for the protection of natural or potentially natural areas in order to preserve their natural ecosystem integrity in perpetuity.

In this connection, the legislature recognizes the fact that the school trust lands are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of the state; that it is the duty of the board of land commissioners to administer this trust so as to secure the largest measure of legitimate and reasonable advantage to the state; and hereby declares the preservation of natural areas, whether trust or other lands, for the enjoyment and inspiration of future generations, to be an object worthy of legislative action helpful to the well-being of the people of the state and also declares that the preservation of natural areas on state trust land has sufficient value to present and future education to meet the state's obligation for the disposition and utilization of trust lands as specified in the Enabling Act.

History: En. 81-2702 by Sec. 2, Ch. 254,
L. 1974.

81-2703. Definitions. (1) "Natural area" means an area of land which must generally appear to have been affected primarily by the forces of nature with the visual aspects of human intrusion not dominant, and also must have one or more of the following characteristics:

(a) An outstanding mixture of variety of vegetation, wildlife, water resource, landscape and scenic values.

(b) An important or rare ecological or geological feature or other rare or significant natural feature worthy of preservation for scientific, educational or ecological purposes.

(2) "Board" means the board of land commissioners.

(3) "Department" means the department of state lands.

(4) "Council" means the natural areas advisory council created by this act.

History: En. 81-2703 by Sec. 3, Ch. 254,
L. 1974.

81-2704. Methods of bringing land under this act. A natural area, as defined in section 3 [81-2703], may become subject to the provisions of this act in any of the following ways:

(1) Designation by the board on lands controlled by the board.

(2) Designation by the legislative assembly on lands owned by the state of Montana.

(3) Acquisition by the board by purchase with consent of the property owner of sufficient interests in private property to protect the natural area; provided however that transfer of surface property or development rights

shall not alter the rights attending the subsurface estate if owned by another party.

(4) Gift accepted by the board.

(5) Trade of state-owned trust land for a natural area on federal, county or private land, provided however that lands received in exchange for trust lands should be equal in value to the exchanged trust land and, as closely as possible, equal in area.

History: En. 81-2704 by Sec. 4, Ch. 254,
L. 1974.

81-2705. Natural area identification procedures—other agencies to assist—annual report to legislature. The department shall establish and utilize procedures to identify the existing or potentially natural areas on lands under its jurisdiction and shall collect information on potential natural areas on private, county, and other state land. The department of natural resources shall co-operate with the department by reporting potential natural areas on state timber lands. The department shall make recommendations to the board for designation of natural areas on state lands controlled by the board and for acquisition of interests in other lands for the preservation of natural areas. The board shall submit to each legislative assembly an annual report on its designation and acquisition activities.

History: En. 81-2705 by Sec. 5, Ch. 254,
L. 1974.

81-2706. Legislature may designate. The legislative assembly may designate natural areas on any state-owned land.

History: En. 81-2706 by Sec. 6, Ch. 254,
L. 1974.

81-2707. Board given acquisition powers. Subject to the limits of available appropriations, the board is authorized to acquire interests to lands by any lawful means for the purpose of designating natural areas; provided that the board shall exercise the power of eminent domain only in specific instances where authorized by the legislative assembly.

History: En. 81-2707 by Sec. 7, Ch. 254,
L. 1974.

81-2708. Designated areas not subject to condemnation or development—pre-existing land uses permitted to continue. (1) Natural areas acquired or designated in accordance with the provisions of this act are protected from condemnation or other development adversely affecting the integrity of the natural area until legislative action is taken specifically authorizing the condemnation or development.

(2) Land uses on the designated or acquired natural area in existence at the time of designation or acquisition by the board may continue under appropriate leases or agreements. All such land uses shall be controlled under regulations established by the board under section 9 [81-2709].

History: En. 81-2708 by Sec. 8, Ch. 254,
L. 1974.

81-2709. Board to promulgate protective rules. (1) The board shall, after at least one public hearing, promulgate comprehensive regulations for the protection of acquired and designated natural areas within its jurisdiction. Such regulations shall be consistent with the intent of this act and shall be promulgated and enforced so as to protect the qualities of the natural areas. Special attention shall be given to protecting areas from recreational overuse.

(2) The regulations shall provide at least two board meetings per year for the receipt of testimony on the board's proposed designation of natural areas. No area shall be designated by the board unless the opportunity for public testimony has been afforded at meetings provided for in the regulations, and positive notification of all involved landowners and lessees has been made.

History: En. 81-2709 by Sec. 9, Ch. 254, L. 1974.

81-2710. Composition and duties of advisory council—governor may appoint. (1) If the governor appoints a natural areas advisory council, the council shall consist of seven (7) citizens of the state, four (4) of whom shall possess experience in the evaluation and preservation of natural areas, and one (1) member each from agriculture, ranching and industry. The council shall make recommendations to the board for the administration of the natural areas system and additions thereto from state, federal, county or private land.

(2) Within ninety (90) days of the receipt of a council recommendation the board shall:

(a) In the case of state trust lands and existing designated areas promulgate a rule designating a recommended natural area contained in the recommendation and adopting the recommendation, or issue a written statement of its reasons for denying the recommendation.

(b) In the case of federal, private or county land direct the department to begin investigation and negotiation to acquire by purchase or trade interests in the land necessary to protect the natural area, or issue a written statement of its reasons for denying the recommendation.

History: En. 81-2710 by Sec. 10, Ch. 254, L. 1974.

81-2711. Consultation with interested parties—proceedings and files to be open. The board and the natural areas advisory council shall consult with citizen organizations and other interested state agencies in the administration of this act. All files and proceedings under this act shall be open to the public.

History: En. 81-2711 by Sec. 11, Ch. 254, L. 1974.

81-2712. When more restrictive provisions to apply. A designated natural area that is or shall become a part of a state park, wildlife refuge, or similar area shall be subject to the provisions of this act and the laws under which the other areas may be administered and in the case of con-

flict between the provisions of these laws the more restrictive provisions shall apply.

History: En. 81-2712 by Sec. 12, Ch. 254, L. 1974.

81-2713. Separability. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

History: En. 81-2713 by Sec. 13, Ch. 254, L. 1974.

TITLE 82—STATE OFFICERS, BOARDS AND DEPARTMENTS

Chapter

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32. State records, 82-3207 to 82-3209.
33. Department of administration—supervision of facilities—building program—communications, 82-3306, 82-3314 to 82-3319, 82-3321, 82-3325, 82-3329 to 82-3331.
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37. Planning and Economic Development Act, 82-3701, 82-3702, 82-3705, 82-3705.1 to 82-3705.3, 82-3706.
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44. Western interstate nuclear compact, 82-4401 to 82-4403.
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CHAPTER 1—DEPARTMENT OF ADMINISTRATION—DUTIES

Section.

- 82-108.1. Definition.
- 82-109. Duties of department—expenditure control.
- 82-109.1. Authorizations for disbursements—submission to department.
- 82-109.2. Pre-audit of liquidated or settled claims—transmittal of unliquidated claims.
- 82-109.3. Form of claims—disapproval by department.
- 82-109.4. Salary schedules maintained by department.
- 82-110. Department to prescribe uniform accounting system.
- 82-111. Assistance of department to legislative assembly—reports of department.
- 82-112. When a budget of contemplated expenditures required by federal agency as a condition of federal aid—department to first submit budget to governor.

82-106 to 82-108. Repealed.

Repeal

Sections 82-106 to 82-108 (Secs. 1 to 3, Ch. 194, L. 1951; Sec. 2, Ch. 98, L. 1961;

Sec. 41, Ch. 177, L. 1965), relating to the office of state controller, were repealed by Sec. 103, Ch. 326, Laws of 1974.

82-108.1. Definition. Unless the context requires otherwise, in this chapter “department” means the department of administration provided for in Title 82A, chapter 2.

History: En. 82-108.1 by Sec. 44, Ch. 326, L. 1974.

Title of Act

An act for the codification and general revision of the laws relating to the department of administration.

82-109. Duties of department—expenditure control. (1) The department shall establish a system of financial control so that the functioning of the various agencies of the state may be improved, duplications of work by different state agencies and employees eliminated, public service improved, and the cost of government reduced.

(2) The department shall apply expenditures against nongeneral fund moneys wherever possible before using the general fund appropriations.

(3) The department may, when authorized by the governor, require a quarterly allotment system of expenditure for any office, institution, or agency. The amount of the respective appropriation made by the legislative assembly shall then, except with respect to items of capital outlay and repairs and replacement, be made available to the office, institution, or agency in quarterly allotments. However, the quarterly allotment shall be based on the requirements of that office, institution, or agency during that quarter based on previous experience of that office, institution, and agency, and not on a prorata quarterly basis.

(4) The department may establish procedures necessary to ensure that expenditures are made and accounted for in accordance with the budget plan authorized by the legislative assembly in the enactment of the appropriations, including, but not limited to, procedures to accrue expenses incurred in one fiscal period and paid in a subsequent fiscal period, and procedures for the issuance of purchase orders or contracts to be paid from succeeding year appropriations that will become available within three (3) months from the date of the issuance of the purchase order or contract.

History: En. Sec. 4, Ch. 194, L. 1951; amd. Sec. 1, Ch. 101, L. 1953; amd. Sec. 8, Ch. 158, L. 1959; amd. Sec. 3, Ch. 267, L. 1971; amd. Sec. 45, Ch. 326, L. 1974.

eral fund moneys” in subsection (2); and added subsection (4).

The 1974 amendment substituted “department” for “controller” and “state controller” throughout the section; and made minor changes in phraseology, punctuation and style.

Amendments

The 1971 amendment inserted “nongen-

82-109.1. Authorizations for disbursements—submission to department. All authorizations for disbursements, shall be given by the agency concerned, and a record shall be kept by the agency of all the authorizations and expenditures. Claims for any disbursement must be submitted to the department and must bear the signature of the authorizing officer or employee.

History: En. Sec. 1, Ch. 97, L. 1961; amd. Sec. 46, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted “de-

partment” for “state controller” in two places; deleted from the last sentence the form to be used in certifying a claim (see parent volume); and made minor changes in phraseology, punctuation and style.

82-109.2. Pre-audit of liquidated or settled claims—transmittal of unliquidated claims. (1) The department may pre-audit a liquidated claim against the state, and ascertain that (1) the proper authorizing signature is present, (2) the claim and supporting documents are mathematically and clerically accurate, (3) the proper appropriation and fund is charged, and (4) the expenditure is legal. The department may not make any charge against any appropriation unless the balance of the appropriation is available and adequate. If no appropriation is available for the payment of a liquidated claim, the department shall audit it and, if it is a valid claim, transmit it to the governor for presentation to the legislative assembly.

(2) An unliquidated claim submitted to the department shall be transmitted to the state board of examiners to be processed as provided by law.

History: En. Sec. 2, Ch. 97, L. 1961; amd. Sec. 29, Ch. 271, L. 1963; amd. Sec. 1, Ch. 91, L. 1969; amd. Sec. 47, Ch. 326, L. 1974.

Amendments

The 1969 amendment, in the first sentence, substituted "controller may pre-audit liquidated or settled claims" for "controller shall pre-audit all liquidated or settled claims"; in item (3), deleted "and that the appropriation is available and adequate" after "fund is charged"; and substituted the present second sentence for the former second and third sentences, reading, "If the volume of claims will not permit such audit of each claim, item (2) above may be accomplished on a spot-check basis. The pre-auditing conduct-

ed by the state controller shall be concerned only with the form and accuracy of the claim and supporting documents, and the availability of the funds and in no event shall the state controller interpose his judgment regarding the wisdom or expediency of any item or items of expenditure."

The 1974 amendment substituted "department" for "state controller" and "controller" throughout the section; substituted "a liquidated claim" for "liquidated or settled claims" after "may pre-audit" in the first sentence of subsection (1); substituted "An unliquidated claim" in subsection (2) for "Any unliquidated or unsettled claims"; and made minor changes in phraseology, punctuation and style.

82-109.3. Form of claims—disapproval by department. The department may prescribe the claim form and may establish in writing, rules governing the preparation, submittal, and processing of claims. All claims shall be processed in the order of their presentation, and all claims disapproved by the department shall be returned to the operating agency with an explanation in writing of why the claim was disapproved.

History: En. Sec. 3, Ch. 97, L. 1961; amd. Sec. 48, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state controller" in two

places; deleted a last sentence giving an aggrieved officer or board the right to appeal to the state board of examiners; and made minor changes in phraseology and punctuation.

82-109.4. Salary schedules maintained by department. The department shall maintain a schedule of all salaries paid to personnel of civil executive state offices and shall only approve payroll claims agreeing with that schedule. All changes in personnel or salary status shall be authorized as provided by law, and the department shall alter the schedule accordingly when notified by the authorizing agency. However, no changes in personnel or salary status may be authorized that will cause an agency to exceed its appropriation or that will result in a deficiency or supplemental appropriation request to the legislative assembly.

History: En. Sec. 4, Ch. 97, L. 1961; amd. Sec. 49, Ch. 326, L. 1974.

partment" for "state controller" in two places; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

82-110. Department to prescribe uniform accounting system. (1) The department shall prescribe and install uniform accounting and reporting for all state agencies and institutions, showing the receipt, use, and disposition of all public money and property, and shall develop plans for improvements and economies in the organization and operation thereof, which shall be submitted to the respective heads of agencies and institutions. Copies of all such plans shall be delivered to the governor and additional copies shall be retained in the office of the department for inspection by the members of the legislative assembly.

(2) The department shall examine all financial affairs of every state agency and institution for the purpose of developing plans for improvements and economies in the organization and operation thereof, and for the purpose of enabling the department to properly perform any of the duties imposed upon the department by this chapter.

(3) The department may establish procedures for canceling and writing off accounts receivable carried on the books of various state agencies which are uncollectible or the continued pursuance of the collection would cost the state more than the amount collected. Such procedures shall include the reporting of any canceling and writing off of accounts receivable to the next session of the legislative assembly.

(4) When not specifically provided by law, the department may establish a minimum amount which shall be paid on a refund due from the various agencies of the state, and no refund amounting to less than the established minimum shall be paid except upon the specific written request of the person entitled to receive the refund.

(5) Notwithstanding any other provision of state law, when it is determined to be in the best financial interest of the state, the department may require any moneys received or collected by any agency of the state to be immediately deposited to the credit of the state treasurer.

(6) All officers, employees, and other persons connected with the fiscal affairs of any state office, agency, or institution must afford all reasonable facilities for the examination of accounts and investigations provided for in this chapter and must make reports, returns, and exhibits relating to such fiscal matters to the department in a form that the department shall prescribe. The department shall keep in its office the names of and amount of salary paid to each person regularly employed by the state and every agency.

(7) If an officer or employee of the state or any agency refuses or neglects to comply with subdivision (6) of this section, the salary of that officer or employee shall, on request of the department to the proper official, be withheld until that officer or employee complies with subdivision (6), and the department certifies approval to the disbursing officer.

History: En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971; amd. Sec. 50, Ch. 326, L. 1974.

Amendments

The 1967 amendment deleted "acting with the state examiner" after "controller" near the beginning of subsection (a) and deleted "in addition to those enumerated in section 82-102 hereof" after "institutions"; and deleted "shall receive copies of all audits and reports of the state examiner relating to all state departments, boards, bureaus, institutions and agencies and, without duplicating

work done in preparing such audits and reports" after "The controller" near the beginning of subsection (b).

The 1971 amendment inserted new subsections (c), (d) and (e); redesignated former subsections (c) and (d) as subsections (f) and (g); and changed internal references to correspond.

The 1974 amendment substituted "department" for "controller" throughout the section; substituted "this chapter" for "this act" in two places; redesignated subsections (a) through (g) as subsections (1) through (7); and made minor changes in phraseology and punctuation.

82-111. Assistance of department to legislative assembly—reports of department. The department shall make all reports and submit all information and data the legislative assembly requests, and, when requested, attend all meetings of the appropriations committee of the house of representatives and of the finance and claims committee of the senate. The department shall, during the consideration of appropriation measures by the house and senate, devote so much of its time as may be required by the above-named committees, under the direction of the respective chairman of the committees.

History: En. Sec. 11, Ch. 194, L. 1951; amd. Sec. 35, Ch. 93, L. 1969; amd. Sec. 51, Ch. 326, L. 1974.

Amendments

The 1969 amendment deleted the subsec-

tion designation "(a)" in the first paragraph and deleted former subsection (b). For previous text, see parent volume.

The 1974 amendment substituted "department" for "controller" in two places; and made minor changes in phraseology.

82-112. When a budget of contemplated expenditures required by federal agency as a condition of federal aid—department to first submit budget to governor. When an agency of the federal government requires as a condition to obtaining federal aid that the state agency entrusted with the administration of the aid submit a budget of the contemplated expenditures for administrative purposes, the proposed budget for the expenditures shall, before it is submitted to the federal authorities for approval, first be submitted by the state agency to the department. The department shall then transmit the budget to the governor who shall approve, modify or alter it, and the governor shall submit the budget as approved by him to the legislative assembly. When the legislative assembly is not in session and additional and unanticipated federal aid becomes available, requiring an amended or supplemental appropriation request, then an agency or institution receiving the federal aid shall submit an amended or supplemental administrative appropriation request through the department to the governor for his approval before submission to the appropriate federal agency.

History: En. Sec. 1, Ch. 210, L. 1953; amd. Sec. 10, Ch. 158, L. 1959; amd. Sec. 52, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" for "director of the budget" in three places; and made minor changes in phraseology and punctuation.

CHAPTER 2—ARMORY BOARD—LEASING OF ARMORY SITES

82-207 to 82-211. Repealed.**Repeal**

Sections 82-207 to 82-211 (Secs. 1 to 5, Ch. 122, L. 1941), relating to the leas-

ing of armory sites, were repealed by Sec. 73, Ch. 94, Laws of 1974.

CHAPTER 3—BOARD OF ATHLETICS

Section

82-301. Board of athletics—compensation and expense—meetings—chairman—seal—quorum.

82-301.1. Definitions.

82-302. Department's duties.

82-303. Jurisdiction over boxing, sparring and wrestling matches—licenses—application for license.

82-305. Duration of bouts—glove specifications—physical examination of participants.

82-306. Forfeiture of license for conducting fake bouts.

82-308. Report of ticket sales—tax on gross receipts—disposition of tax moneys received.

82-309. Bond of applicant for license.

82-310. Examination of books and records on failure to make report or unsatisfactory report—penalty for failure to pay tax.

82-301. (4551) Board of athletics—compensation and expense—meetings—chairman—seal—quorum. The members of the board of athletics shall serve without compensation but shall be allowed necessary expenses, to be paid by the state treasurer on warrant properly drawn out of the proceeds of the tax collected under this act. The board shall before April 1 of each year, elect one of its number chairman, shall adopt a seal for the board and may adopt rules for the administration of its office. Two (2) of the members of the board constitute a quorum to do business; and the concurrence of at least two (2) members is necessary to render a choice or decision by the board.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4551, R. C. M. 1921; amd. Sec. 1, Ch. 103, L. 1927; amd. Sec. 345, Ch. 350, L. 1974.

Amendments

The 1974 amendment rewrote this section which established the former state athletic commission. For prior law, see parent volume.

82-301.1. Definitions. Unless the context requires otherwise, in this chapter:

(1) "Board" means the board of athletics, provided for in section 82A-1602.4; and

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. 82-301.1 by Sec. 346, Ch. 350, L. 1974.

82-302. (4552) Department's duties. The department shall keep a record of the board's proceedings, preserve the board's books, documents and papers and prepare for service notices and other papers required by the board; and it may under direction of the board issue subpoenas for the attendance of witnesses before the board and may, under direction of

the board, administer oaths in matters pertaining to the administration of the affairs of the board.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4552, R. C. M. 1921; amd. Sec. 2, Ch. 103, L. 1927; amd. Sec. 36, Ch. 93, L. 1969; amd. Sec. 347, Ch. 350, L. 1974.

Amendments

The 1969 amendment substituted the reporting requirements of section 82-4002 for former provision requiring annual reports.

The 1974 amendment rewrote this section which established the duties of the secretary to the former state athletic commission. For prior law, see parent volume.

82-303. (4554) Jurisdiction over boxing, sparring and wrestling matches—licenses—application for license. The board has the sole direction, management, control, and jurisdiction over boxing, sparring, and wrestling matches and exhibitions conducted, held, or given within this state by a club, corporation, or association. No boxing, sparring, or wrestling match or exhibition may be conducted, held, or given within this state except in accordance with this act. The board may, in its discretion and subject to sections 82A-1603 and 82A-1604, issue and at its pleasure revoke, a license to conduct, hold, or give boxing, sparring, and wrestling matches and exhibitions to a club, corporation, or association, and which, if it is an amateur athletic association, may be incorporated or organized under rules adopted by the board. This act does not apply to or prohibit amateur boxing or wrestling exhibitions conducted in or by organized amateur clubs, schools, and gymnasiums. A license is subject to rules the board makes. An application for a license shall be in writing and addressed to the department and verified by an officer of the club, corporation, or association on whose behalf the application is made. It shall contain facts which show the applicant entitled to receive a license, and other facts and recitals the board by rule requires to be shown.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4554, R. C. M. 1921; amd. Sec. 3, Ch. 103, L. 1927; amd. Sec. 1, Ch. 171, L. 1953; amd. Sec. 348, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" or "department" for "commission" throughout the section; inserted "subject to sections 82A-1603 and 82A-1604" in the third sentence; and made minor changes in phraseology, punctuation and style.

82-305. (4556) Duration of bouts—glove specifications—physical examination of participants. A boxing or sparring match or exhibition may be not more than twenty (20) rounds in length; and the contestants shall wear during these contests, gloves weighing at least six (6) ounces. No person may take part in an exhibition or sparring match unless he has first passed a rigorous physical examination to determine his fitness to engage in the exhibition. The examination is to be conducted by a regular practicing physician designated by the board.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4556, R. C. M. 1921; amd. Sec. 5, Ch. 103, L. 1927; amd. Sec. 1, Ch. 185, L. 1947; amd. Sec. 349, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "commission"; and made minor changes in phraseology.

82-306. (4557) Forfeiture of license for conducting fake bouts. A club, corporation, or association which conducts, holds, gives, or participates in, a sham or fake boxing or sparring match or exhibition shall forfeit the license issued under this act, and it may not thereafter receive another license under this act.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4557, R. C. M. 1921; amd. Sec. 6, Ch. 103, L. 1927; amd. Sec. 350, Ch. 350, L. 1974.

Amendments

The 1974 amendment made minor changes in phraseology, punctuation and style.

82-308. (4559) Report of ticket sales—tax on gross receipts—disposition of tax moneys received. A club, corporation, or association which exercises the privileges conferred by this act, shall, within twenty-four (24) hours after the determination of a boxing, sparring, or wrestling contest or exhibition, furnish to the department a written report, verified by one of its officers, showing the number of tickets sold for the boxing, sparring, or wrestling contest or exhibition and the amount of gross proceeds, and such other matters as the board prescribes, and shall also within twenty-four (24) hours pay to the county treasurer a tax of five per cent (5%) of its total gross receipts after deducting the federal admission tax, if any, from the sale of tickets of admission to the boxing, sparring, or wrestling match or exhibition. This tax shall be transmitted to the state treasurer by the county treasurer within a period of ten (10) days after its collection. The tax shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4559, R. C. M. 1921; amd. Sec. 8, Ch. 103, L. 1927; amd. Sec. 2, Ch. 171, L. 1953; amd. Sec. 162, Ch. 147, L. 1963; amd. Sec. 30, Ch. 271, L. 1963; amd. Sec. 351, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commission" in the first sentence; rewrote the last sentence relating to disposition of money transmitted to the state treasurer (see parent volume); and made minor changes in phraseology, punctuation and style.

82-309. (4560) Bond of applicant for license. Before a license is granted to a club, corporation, or association to conduct, hold, or give a boxing, sparring, or wrestling match or exhibition, the applicant shall execute and file with the state treasurer a bond in the sum of five thousand dollars (\$5,000), payable to this state, to be approved in form by the attorney general, and as to sufficiency of the sureties by the board. The bond shall be conditioned on the payment of the tax imposed by section 82-308. On the filing and approving of the bond, the department shall issue to the applicant a license.

History: En. as Ch. 190, L. 1919, app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4560, R. C. M. 1921; amd. Sec. 9, Ch. 103, L. 1927; amd. Sec. 3, Ch. 171, L. 1953; amd. Sec. 352, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "commission"; and made minor changes in phraseology.

82-310. (4561) Examination of books and records on failure to make report or unsatisfactory report—penalty for failure to pay tax. When a club, corporation, or association fails to make a report of a contest at the time prescribed by this act or when the report is unsatisfactory to the board, it may examine or have examined the books and records of the club, corporation, or association, and subpoena and examine under oath its officers and other persons as witnesses for the purpose of determining the total amount of its gross receipts for a contest and the amount of tax due under this act, which tax it may, as the result of the examination, fix and determine. In case of default in the payment of tax ascertained to be due, together with the expenses incurred in making the examination, for a period of twenty (20) days after notice to the delinquent club, corporation, or association of the amount at which it may be fixed by the board, the delinquent shall forfeit its license and is disqualified from receiving a new license or a renewal of license; and it shall in addition forfeit to this state the sum of five hundred dollars (\$500), which may be recovered by the attorney general in the name of this state in the same manner as other penalties are by law recovered, and when collected shall be used and applied as other moneys received under this act.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920; effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4561, R. C. M. 1921; amd. Sec. 10, Ch. 103, L. 1927; amd. Sec. 353, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "commission"; and made minor changes in phraseology, punctuation and style.

CHAPTER 4—ATTORNEY GENERAL

Section

- 82-401. General duties.
- 82-414. Division of criminal investigation created—appointment and qualifications.
- 82-415. Definition of term.
- 82-416. Powers and duties of agents.
- 82-417. Access to files of division of criminal investigation.
- 82-418. Division of criminal investigation covered by retirement program.
- 82-419. State agencies to co-operate with division of criminal investigation.
- 82-420. Location of division of criminal investigation.
- 82-421. Training co-ordinator for county attorneys.
- 82-422. Appointment of training co-ordinator.
- 82-423. Functions of training co-ordinator.

82-401. (199) General duties. It is the duty of the attorney general: 1 to 10. * * * [Same as parent volume.]

11. To discharge the duties of a member of the board of examiners, state board of land commissioners, board of state prison commissioners, and other duties prescribed by law.

12. * * * [Same as parent volume.]

History: En. Sec. 460, Pol. C. 1895; re-en. Sec. 193, Rev. C. 1907; re-en. Sec. 199, R. C. M. 1921; amd. Sec. 89, Ch. 199, L. 1965; amd. Sec. 13, Ch. 344, L. 1973. Cal. Pol. C. Sec. 470.

board of education" following "state board of land commissioners" in subdivision 11.

Legislative Intent

Section 14 of Ch. 344, Laws 1973 read "It is the intent of the legislature that sections 1 through 11 of this act be codified in title 75, chapter 56, R. C. M. 1947."

Amendments

The 1973 amendment deleted "state

Separability Clause

Section 15 of Ch. 344, Laws 1973 read "It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 16 of Ch. 344, Laws 1973 read "Sections 75-5601 through 75-5606 and 75-5608, R. C. M. 1947, are repealed."

Cross-References

Attorney general as head of department of law enforcement and public safety, sec. 82A-1201.

Assistance of County Attorneys

The attorney general has no power to initiate a felony prosecution in a district court independent of the county attorney, but he may order the county attorney to do so. State ex rel. Woodahl v. District Court, 159 M 112, 495 P 2d 182.

82-414. Division of criminal investigation created—appointment and qualifications. (1) There is hereby created a permanent division of criminal investigation within the office of the state attorney general.

(2) The attorney general shall appoint such agents and other necessary assisting personnel and fix their compensation.

(3) Each agent shall be a person qualified by experience, training and high professional competence in criminal investigation. Qualifications shall be equal to those of similarly assigned federal bureau of investigation personnel.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971.

Title of Act

An act creating the position of criminal investigator within the department of the attorney general and defining the duties of said position.

vision of criminal investigation" for "position of criminal investigator" in subsection (1); substituted "such agents" for "the investigator" in subsection (2); and substituted "Each agent" for "The investigator" at the beginning of subsection (3).

Amendments

The 1971 amendment substituted "di-

Cross-References

Position abolished and functions transferred, sec. 82A-1202(2).

82-415. Definition of term. As used in this act:

"Agent" means a person appointed to the division of criminal investigation within the attorney general's office.

History: En. Sec. 2, Ch. 176, L. 1967; amd. Sec. 2, Ch. 219, L. 1971.

Amendments

The 1971 amendment substituted the

definition of "agent" for a paragraph defining "investigator" as "the person appointed to the position of criminal investigator within the attorney general's office."

82-416. Powers and duties of agents. An agent shall have the power and duty to:

(1) Assist city, county, state and federal law enforcement agencies at their request by providing expert and immediate aid in investigation and solution of felonies committed in the state;

(2) Assist various law enforcement schools held in the state for law officers when requested;

(3) Co-operate with the bureau of criminal identification and investigation;

(4) Act as a peace officer as defined in the laws of Montana when engaged in assisting or acting under the direction of city, county, state and federal law agencies as provided in this section.

History: En. Sec. 3, Ch. 176, L. 1967;
amd. Sec. 3, Ch. 219, L. 1971.

agent" for "The investigator" at the beginning of the section; and added subdivision (4).

Amendments

The 1971 amendment substituted "An

82-417. Access to files of division of criminal investigation. A person with a known criminal record shall not be permitted access to the files of the division of criminal investigation, nor shall anyone else, without the order of a district judge or a supreme court justice.

History: En. Sec. 4, Ch. 176, L. 1967;
amd. Sec. 4, Ch. 219, L. 1971.

Amendments

The 1971 amendment substituted "division of criminal investigation" for "investigator."

82-418. Division of criminal investigation covered by retirement program. All agents and assisting personnel shall be covered by the public employees' retirement system.

History: En. Sec. 5, Ch. 176, L. 1967;
amd. Sec. 5, Ch. 219, L. 1971.

Amendments

The 1971 amendment substituted "All agents" for "The investigator" at the beginning of the section.

82-419. State agencies to co-operate with division of criminal investigation. All state departments and agencies shall co-operate with such agents and assisting personnel in providing transportation, educational and laboratory facilities for their use when so requested.

History: En. Sec. 6, Ch. 176, L. 1967;
amd. Sec. 6, Ch. 219, L. 1971.

agents and assisting personnel" for "the investigator"; and made a minor change in phraseology.

Amendments

The 1971 amendment substituted "such

82-420. Location of division of criminal investigation. The location of the division of criminal investigation and its personnel shall be at the discretion of the state attorney general.

History: En. Sec. 7, Ch. 176, L. 1967;
amd. Sec. 7, Ch. 219, L. 1971.

Effective Date

Section 8 of Ch. 219, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 4, 1971.

Amendments

The 1971 amendment substituted this section for a provision requiring that the office of the criminal investigator be located at Deer Lodge.

82-421. Training co-ordinator for county attorneys. There is created, within the department of justice, a training co-ordinator for county attorneys.

History: En. Sec. 1, Ch. 353, L. 1973.

Title of Act

An act creating a training co-ordinator of county attorneys within the department

of justice; providing that the training co-ordinator be appointed by the attorney general; providing for the functions of the training co-ordinator; and providing an immediate effective date.

82-422. Appointment of training co-ordinator. The training co-ordinator shall be appointed by the attorney general from a list of three (3) names proposed and submitted by the Montana county attorneys association.

History: En. Sec. 2, Ch. 353, L. 1973.

82-423. Functions of training co-ordinator. The training co-ordinator shall perform the functions assigned by the department head. The functions may include, but are not limited to, the following:

(1) providing local training in current aspects of the criminal law for county attorneys and other law enforcement personnel;

(2) assisting in developing and disseminating standards, procedures and policies which will ensure that criminal laws are applied consistently and uniformly throughout the state of Montana;

(3) consolidating present and past information on important aspects of the criminal law and providing a pool of official opinions, legal briefs and other relevant criminal law information;

(4) providing assistance with research, briefs or other technical services requested by a county attorney or law enforcement official;

(5) applying for and disbursing federal funds available to aid the prosecutorial function.

History: En. Sec. 3, Ch. 353, L. 1973.

Effective Date

Section 4 of Ch. 353, Laws 1973 pro-

vided the act should be in effect from and after its passage and approval. Approved March 17, 1973.

CHAPTER 5—CLERK OF SUPREME COURT

Section

82-501. Election and term of office.

82-503. Fees.

82-501. (370) Election and term of office. There must be a clerk of the supreme court, who must be elected by the electors at large of the state, and hold his office for the term of six years from the first Monday of January next succeeding his election.

History: En. Sec. 870, Pol. C. 1895; re-en. Sec. 299, Rev. C. 1907; re-en. Sec. 370, R. C. M. 1921; amd. Sec. 45, Ch. 100, L. 1973. Cal. Pol. C. Secs. 749-758.

Amendments

The 1973 amendment deleted a final clause relating to the term of office of the first clerk elected under the 1889 constitution.

82-503. (372) Fees. He must collect in advance the following fees: For filing the transcript on appeal, in each civil case appealed to the supreme court, twenty dollars (\$20) payable by the appellant, and ten dollars (\$10) payable by respondent, at the time of his appearance, in full for all services rendered in each case, up to the remittitur to the court below; for filing petition for any writ, twenty dollars (\$20), in full for all services rendered in each cause; for certificate of admission as attorney and counselor, five dollars (\$5); for making transcripts, copies of papers or record, fifteen cents (\$.15) per folio; for comparing any document re-

quiring a certificate, five cents (\$.05) per folio; for each certificate under seal, one dollar (\$1).

Three-fourths ($\frac{3}{4}$) of all fees collected by him must be paid into the state treasury, which shall be credited to the credit of the general fund, one-fourth ($\frac{1}{4}$) of all fees collected by him shall be paid to the secretary of the public employees' retirement system board to be credited to the judges' retirement fund.

History: En. Sec. 872, Pol. C. 1895; re-en. Sec. 301, Rev. C. 1907; re-en. Sec. 372, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1939; amd. Sec. 1, Ch. 112, L. 1943; amd. Sec. 87, Ch. 147, L. 1963; amd. Sec. 3, Ch. 218, L. 1967.

Compiler's Notes

The last paragraph of section 3, Chapter 218, Laws 1967, read: "This act shall be in full force and effect from and after its passage and approval." The act was approved March 1, 1967.

Amendments

The 1967 amendment increased filing fees on appeals to the supreme court, payable by the appellant, from \$10 to \$20, and by the respondent, from \$5 to \$10 and increased fees for filing petition for any writ from \$10 to \$20 in the first paragraph; added "Three-fourths ($\frac{3}{4}$) of" at the beginning of the second paragraph; added the passage beginning "and one-fourth ($\frac{1}{4}$) of all fees collected" at the end of the second paragraph; and made minor changes in style.

CHAPTER 6—DEPUTIES—APPOINTMENT BY CERTAIN OFFICERS— CLERKSHIP OF CONSOLIDATED BOARDS

82-601. (122) Deputy state officers.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

82-602. (123.1) Repealed.

Repeal

Section 82-602 (Sec. 1, Ch. 74, L. 1925; Sec. 90, Ch. 199, L. 1965), relating to con-

solidation of clerkships, was repealed by Sec. 103, Ch. 326, Laws of 1974.

CHAPTER 8—ENTOMOLOGIST, STATE—DUTIES AS TO AGRICULTURE

Section

82-804.2. [Transferred.]

82-805 to 82-814. [Transferred.]

82-801 to 82-804. (913 to 916) Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 59, L. 1903; Secs. 1 to 4, Ch. 103, L. 1907; Sec.

1, Ch. 114, L. 1925), relating to the state entomologist, were repealed by Sec. 5, Ch. 75, Laws 1967.

82-804.1. Repealed.

Repeal

Section 82-804.1 (Sec. 1, Ch. 75, L. 1967), relating to appointment of the

state entomologist, was repealed by Sec. 173, Ch. 218, Laws of 1974.

82-804.2. [Transferred.]

Compiler's Notes

Section 127, Ch. 218, Laws of 1974 re-numbered this section as sec. 75-8806.

82-804.3. Repealed.

<p>Repeal Section 82-804.3 (Sec. 3, Ch. 75, L. 1967), relating to biennial report of the</p>	<p>state entomologist, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.</p>
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82-804.4. Repealed.

<p>Repeal Section 82-804.4 (Sec. 4, Ch. 75, L. 1967), relating to expenses of the state</p>	<p>entomologist, was repealed by Sec. 173, Ch. 218, Laws of 1974.</p>
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82-805 to 82-814. [Transferred.]

<p>Compiler's Notes Sections 128 to 130, 133 to 139 renum-</p>	<p>bered these sections as secs. 3-3101 to 3-3103, 3-3106 to 3-3112.</p>
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CHAPTER 9—ENUMERATION OF CERTAIN EX OFFICIO STATE OFFICERS

82-902. (117) Repealed.

<p>Repeal Section 82-902 (Sec. 347, Pol. C. 1895), relating to the board of state prison com-</p>	<p>missions, was repealed by Sec. 103, Ch. 326, Laws of 1974.</p>
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82-903. (118) Repealed.

<p>Repeal Section 82-903 (Sec. 348, Pol. C. 1895), relating to the board of pardons, was re-</p>	<p>pealed by Sec. 96, Ch. 120, Laws of 1974; Sec. 1, Ch. 158, Laws of 1974.</p>
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82-904. (119) Repealed.

<p>Repeal Section 82-904 (Sec. 349, Pol. C. 1895; Sec. 2, Ch. 67, L. 1973), relating to the</p>	<p>composition of the state board of land commissioners, was repealed by Sec. 116, Ch. 428, Laws 1973.</p>
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CHAPTER 10—EXAMINER, STATE

<p>Section 82-1002. Duties of state examiner. 82-1005. Power to examine books and papers. 82-1007. Access to accounts of public officers—actions to compel. 82-1008. Examination of accounts of cities, towns and certain school districts, and fire districts. 82-1009. Laws applicable to such examinations. 82-1010. Entering examiner's report in minutes of city or town—publication. 82-1011. Salary and expenses.</p>	
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82-1002. (210) Duties of state examiner. The duties of the state examiner and his assistants are:

1. To examine at least once in each year the books and accounts of the state treasurer, clerk of the supreme court, county treasurers, county clerks, district court clerks, county auditors, sheriffs, public administrators, boards of county commissioners of each county, and all other county and municipal officers and boards.

The costs incurred by the state examiner and his assistants in conducting the examinations of counties, cities and towns shall be reimbursed to the state at the rate of eighty dollars (\$80) per day for each person

engaged in an examination, and the money shall be paid at the conclusion of the examination to the state treasurer who shall credit such payment to the general fund of the state.

2. To prescribe the general methods and details of accounting for the receipt and disbursement of all moneys belonging to the counties, cities, towns, or school districts, and to establish in all such offices such general methods and details of accounting as are required by law or are prescribed by the state examiner, and all county, city, town or school district officers are hereby compelled to conform therewith.

3. The state examiner, after examination of the affairs of the state treasurer and clerk of the supreme court, must make report to the governor and to the attorney general of the result of such examination, within sixty days thereafter; and if any violation of law or nonperformance of duty is found on the part of any such officer, they must be proceeded against by the attorney general as provided by law.

4. The state examiner, or his assistants, after the examination of the affairs of any county, city or town officers, must make report of such examination to the board of county commissioners, the city or town councils and to the county, city or town attorney of such county, city or town within sixty (60) days after such examination; and if any violation of law or nonperformance of duty is found on the part of any officer or board, such officer or board must be proceeded against by the attorney general, county, or city or town attorney as provided by law.

5. The state examiner must report as provided in section 2 [82-4002] of this act.

6. It shall be the duty of the county attorneys of the various counties of the state of Montana and the attorneys of the various cities and towns of the state of Montana to make report to the state examiner within thirty days after receiving from the state examiner the report of any examination of any county, city or town, as to what proceedings he has instituted or is intending to institute relating to violations of law and nonperformance of duty, as set forth in the report of the state examiner.

7. If any county or city attorney refuses or neglects to notify the state examiner within thirty days after receiving the report of any examination of any county, city or town, as to what proceedings he has instituted or is about to institute against any officer for violations of law or nonperformance of duty, as evidenced by matters of record, and as set forth in the state examiners report; the state examiner may withhold the salary of such county or city attorney by filing notice with the proper officials, until proper and satisfactory explanation has been made to the state examiner for such nonperformance of duty, provided further, that should the county or city attorney fail or refuse to prosecute such cases, the state examiner may employ an attorney to prosecute such case at the expense of the county, city or town.

8. When in the judgment of the state examiner it shall be deemed necessary, special examinations may be made of any county, city, town, school district, irrigation district, high school, or any other county or municipal office, board or commission, whether temporary or permanent,

however created, and for whatever purpose, having the control, management, collection or disbursement of any public money of any character or description. Costs for such special examination shall be reimbursed to the state at the conclusion of such examination at the rate of eighty dollars (\$80) a day for each person engaged in the examination and shall be paid to the state treasurer for the credit of the general fund.

History: Ap. p. Sec. 491, Pol. C. 1895; amd. Sec. 1, p. 105, L. 1897; amd. Sec. 491, Ch. 100, L. 1903; re-en. Sec. 209, Rev. C. 1907; re-en. Sec. 210, R. C. M. 1921; amd. Sec. 1, Ch. 78, L. 1923; amd. Sec. 14, Ch. 249, L. 1967; amd. Sec. 37, Ch. 93, L. 1969; amd. Sec. 2, Ch. 256, L. 1971; amd. Sec. 1, Ch. 388, L. 1971.

Amendments

The 1967 amendment, in subdivision 1, deleted "state auditor, secretary of state" after "treasurer"; deleted "state game warden, register of state land office, and all other state officers having the collection or handling of state money" after "supreme court"; inserted "county and municipal" after "all other"; deleted "and" before "boards"; and added "and institutions" after "boards"; in subdivision 2, deleted "and the educational, charitable, penal, and reformatory institutions of the state of Montana" after "school districts"; deleted "and officers of educational, charitable, penal and reformatory institutions of the state of Montana" after "district officers"; deleted old subdivision 3, which read, "To examine at least once each year the books and accounts of the treasurer and secretary of each and all of the educational, charitable, penal, and reformatory institutions of the state of Montana, and to examine into the financial affairs and conditions of each and all of said institutions"; redesignated old subdivisions 4 through 10 as new subdivisions 3 through 9; in new subdivision 5, now subdivision 3, substituted "officer or" for "state officer, board, or institution" after "affairs of any"; and at the end new

subdivision 7, now subdivision 5, deleted "but such report must not be printed unless the printing thereof be ordered by the state board of examiners."

The 1969 amendment substituted reporting requirements of section 82-4002 for former provisions of subdivision 7, now subdivision 5, requiring annual reports.

Chapter 256, Laws of 1971, added the second paragraph to subdivision 1; added a subdivision 10 which the compiler has redesignated as subdivision 8; and made minor changes in punctuation and style.

Chapter 388, Laws of 1971, deleted "county assessors" from the first paragraph of subdivision 1; deleted "and institutions" from the end of the first paragraph of subdivision 1; deleted former subdivisions 3 and 4, which were subdivisions 4 and 5 in the parent volume; redesignated former subdivisions 5 to 9, inclusive, as subdivisions 3 to 7, inclusive; substituted "the state treasurer and clerk of the Supreme Court" for "any officer or board of county commissioners" near the beginning of subdivision 3; deleted "or board" following "officer" in the latter part of subdivision 3; deleted "or county attorney" following "attorney general" near the end of subdivision 3; inserted references to cities and towns, city and town officers, city and town councils and city and town attorneys in subdivision 4; changed the reporting time required in subdivision 4 from thirty to sixty days after examination; inserted "attorney general" near the end of subdivision 4; and made minor changes in phraseology and punctuation.

82-1005. (212) Power to examine books and papers. The state examiner or his assistant has power to examine any books, papers, accounts, and documents in the office or possession of any county or banking or other institution referred to in this act, and to send for persons or papers and to examine under oath any and all persons concerning the same.

History: Ap. p. Sec. 494, Pol. C. 1895; amd. Sec. 493, p. 107, L. 1897; amd. Sec. 493, Ch. 100, L. 1903; re-en. Sec. 211, Rev. C. 1907; re-en. Sec. 212, R. C. M. 1921; amd. Sec. 15, Ch. 249, L. 1967.

Amendments

The 1967 amendment deleted "or state officer" after "any county."

82-1007. (214) Access to accounts of public officers—actions to compel.
(1). * * * [Same as parent volume.]

(2) Any county, city, town or school district officer who shall refuse to accord the state examiner access during an examination of such officer's accounts, to his cash, bank accounts, or any of the papers, vouchers or records of his office, or if the state examiner, after counting the cash and verifying the bank accounts of such officer shall find that a shortage exists in the accounts of said officer, the state examiner shall forthwith file a verified preliminary report showing the refusal of such officer to accord to him access to the examination of such accounts, cash, bank accounts, papers, vouchers or records, or the existence of such shortage, and the amount or approximate amount thereof with the board of county commissioners of the proper county if the officer be a county or school district officer, and with the city or town council if the officer be a city or town officer; upon the filing of such verified statement, such officer shall immediately be suspended from the duties and emoluments of his office, and the board of county commissioners of the county in case of county or school district officers, and the city or town council in case of a city or town officer, shall appoint some qualified person to such office, pending the completion of such examination.

(3) Upon the completion of the audit or examination of the accounts of such officer by the state examiner, if a shortage shall be found to have existed in the accounts of such officer on the date of the commencement of such examination, the state examiner shall file, in the office of the board of county commissioners of the proper county in the case of a county or school district officer, and with the city or town council in the case of a city or town officer, a verified final report of the examination or audit, showing such shortage, whereupon the right of such officer to such office shall be forfeited, and such office shall thereupon become vacant as of the date of the suspension of such officer as hereinabove provided, and the person appointed to such office upon the suspension of said officer shall hold said office until the election and qualification of his successor, as provided by law.

(4). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 84, L. 1915; re-en. Sec. 214, R. C. M. 1921; amd. Sec. 1, Ch. 179, L. 1939; amd. Sec. 16, Ch. 249, L. 1967.

Amendments

The 1967 amendment deleted "state" after "Any" at the beginning of subsec-

tion (2); deleted "with the secretary of state if such officer shall be a state officer" after "amount thereof"; deleted "and the governor, in the case of a state officer" after "of his office"; and, in subdivision (3), deleted "the secretary of state in case of a state officer, and" after "in the office of."

82-1008. (215) Examination of accounts of cities, towns and certain school districts, and fire districts. The state examiner in addition to the duties now imposed upon his office, shall have the power and authority and it shall be his duty, to make at least one (1) examination each year of the books and accounts of all incorporated cities and towns.

The state examiner shall have the power and authority, and it shall be his duty, to make at least one (1) examination during each fiscal year of the books and accounts of all school districts of the first and second class and of third class districts maintaining a high school, in like manner as is now required by law for the examination of the books and accounts of state and county officers.

A copy of the examiner's report shall be filed with the county superintendent of schools, the state superintendent of public instruction, and the clerk of the school district, and any citizen of the state of Montana shall have the right to inspect, copy out and publish any of the facts therein contained.

The state examiner shall have the power and authority and it shall be his duty to make at least one (1) examination during each fiscal year (of) the books and accounts of all fire districts and volunteer fire departments created and existing in unincorporated areas, towns and villages supported by a mill levy.

For such examination a fee of seven dollars fifty cents (\$7.50) per hour per man shall be charged and said fee shall be paid by the fire district or fire department into the state treasury and credited by the state treasurer to the earmarked revenue fund.

A copy of such audit shall be filed with the clerk and recorder of the county in which such fire district or fire department exists.

The costs incurred by the state examiner and his assistants in conducting the examinations of county-free high schools, school districts or departments shall be reimbursed to the state at the rate of seventy dollars (\$70) per day for each person engaged in an examination, and the moneys shall be paid at the conclusion of the examination to the state treasurer who shall credit such payment to the general fund of the state.

History: En. Sec. 1, Ch. 84, L. 1913; re-en. Sec. 215, R. C. M. 1921; amd. Sec. 1, Ch. 164, L. 1937; amd. Sec. 1, Ch. 169, L. 1955; amd. Sec. 1, Ch. 137, L. 1959; amd. Sec. 1, Ch. 125, L. 1963; amd. Sec. 1, Ch. 141, L. 1963; amd. Sec. 3, Ch. 256, L. 1971.

Amendments

The 1971 amendment deleted the former third paragraph, for text of which see parent volume; added the final paragraph; and made a minor change in phraseology.

82-1009. (216) Laws applicable to such examinations. That all laws now in force relative to the examination of the books and accounts of county officers, are, and the same are hereby declared to be applicable to the examination of the books and accounts of incorporated cities and towns, and to the books and accounts of school districts of the first and second class.

History: En. Sec. 2, Ch. 84, L. 1913; re-en. Sec. 216, R. C. M. 1921; amd. Sec. 17, Ch. 249, L. 1967.

Amendments

The 1967 amendment deleted "state and" after "accounts of."

82-1010. (216.1) Entering examiner's report in minutes of city or town—publication. Upon receipt of the state examiner's report covering the examination of the affairs of any incorporated city or town, it shall be the duty of the mayor and the members of the city council or city commission to have such report entered and made a part of the minutes of the next regular meeting. Provided, further, that the state examiner shall, at the time such report of examination is forwarded to the city or town officials and for cities and towns with more than one thousand (1,000) residents, send a like copy to the official newspaper of the city or town for publication. Provided, further, that the state examiner shall, at the time such report of examination is forwarded to the city or town

officials in cities and towns with one thousand (1,000) or less, send a copy of only its general comments section to the official newspaper of the city or town for publication. Such publication shall be published in one issue of the aforesaid official newspaper forthwith and shall be a charge against the city or town at a rate to be agreed on but not to exceed that charged boards of county commissioners for the printing of the reports of the state examiner.

History: En. Sec. 1, Ch. 33, L. 1929; amd. Sec. 1, Ch. 456, L. 1973.

cities and towns with more than one thousand (1,000) residents" in the second sentence; and inserted the third sentence.

Amendments

The 1973 amendment inserted "and for

82-1011. (218) Salary and expenses. The salary of the state examiner, for all services rendered in any capacity whatever, shall be in such amount as may be specified by the legislative assembly in the appropriation to the state examiner, and in addition thereto the state shall pay the necessary office and travel expenses of himself and assistants. If the legislative assembly does not specify the maximum salary of the state examiner an increase in the salary of the state examiner must be approved by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry.

History: En. Sec. 1, Ch. 149, L. 1907; Sec. 213, Rev. C. 1907; amd. Sec. 1, Ch. 93, L. 1911; re-en. Sec. 218, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1953; amd. Sec. 7, Ch. 225, L. 1963; amd. Sec. 10, Ch. 237, L. 1967.

Amendments

The 1967 amendment substituted "in such amount * * * to the state examiner" for "not more than ten thousand dollars (\$10,000) per year" in the first sentence, and added the last two sentences.

82-1014 to 82-1016. Repealed.

Repeal

These sections (Secs. 1 to 3, Ch. 279, L. 1959; Secs. 1, 2, Ch. 81, L. 1961; Sec. 91, Ch. 199, L. 1965), relating to the

examination of accounts of state institutions, were repealed by Sec. 23, Ch. 249, Laws 1967.

CHAPTER 11—EXAMINERS, STATE BOARD OF—ADVERTISING FOR BIDS—STATE PRINTING CONTRACT AND SUPPLIES

Section

82-1105. Records.

82-1131.1. Repeal clause.

82-1136. State purchasing not affected.

82-1139. The bond.

82-1149. Establishment of prices for state printing.

82-1105. (234) Records. The department of administration must keep a record of all the board's proceedings, and any member may have his dissent to the action of the majority, upon any matter, entered upon the record.

History: Sec. 228, Rev. C. 1907; re-en. Sec. 234, R. C. M. 1921; amd. Sec. 8, Ch. 97, L. 1961; amd. Sec. 53, Ch. 326, L. 1974. See also history of Sec. 82-1101.

Amendments

The 1974 amendment substituted "The department of administration" for "The board"; and made minor changes in phraseology.

82-1106 (235) Repealed.

Repeal

Section 82-1106 (Sec. 229, Rev. C. 1907), relating to the board of examiner's

power to establish rules and regulations, was repealed by Sec. 103, Ch. 326, Laws of 1974.

82-1131.1. Repeal clause. Section 82-1131 does not apply to work done by inmates at an institution in the department of institutions.

History: En. Sec. 2, Ch. 142, L. 1961; amd. Sec. 92, Ch. 199, L. 1965; amd. Sec. 54, Ch. 326, L. 1974.

tion 82-1131" for "The provisions of this act (82-1131, 82-1131.1)"; deleted "shall not repeal to any extent the provisions of section 80-731"; and made minor changes in phraseology and style.

Amendments

The 1974 amendment substituted "Sec-

82-1136. (259.6) State purchasing not affected. Nothing contained in section 82-1131 through 82-1135 alters, modifies, or changes the laws providing for or relating to department of administration functions relating to state purchasing.

History: En. Sec. 6, Ch. 149, L. 1927; amd. Sec. 55, Ch. 326, L. 1974.

partment of administration functions relating to state purchasing" for "state purchasing department, or the purchasing agent of the state"; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

82-1137. (260) State printing—union label, etc.

Cross-References

Printing defined, sec. 19-103.1.

82-1139. (262) The bond. Each bid must be accompanied by a bond, with two or more sureties, in a sum not less than twice the amount of the value of the articles to be supplied, payable to the state, conditioned that if the bidder receives the contract he will deliver the supplies for which he has contracted, under such rules as the department of administration may prescribe, and for the faithful performance of the contract.

History: En. Sec. 708, Pol. C. 1895; re-en. Sec. 256, Rev. C. 1907; re-en. Sec. 262, R. C. M. 1921; amd. Sec. 56, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department of administration" for "board."

82-1144. (267) Repealed.

Repeal

Section 82-1144 (Sec. 713, Pol. C. 1895), relating to interest of government officers

in state printing contracts, was repealed by Sec. 3, Ch. 43, Laws 1973. For new law, see sec. 82-1922.

82-1149. (276) Establishment of prices for state printing. Hereafter in all cases and instances where any publication is required by law, or is duly authorized, to be made, executed or accomplished by or for or on behalf of the state of Montana, or any of the institutions of said state or any of the departments, boards, bureaus, or commissions thereof, or any of the officers, agents or employees of the state when acting within the scope of their lawful authority and for the benefit of the state of Montana, the same shall be published in a newspaper printed and published

in the state of Montana, and of general bona fide and paid circulation with second class mailing privilege, and having been printed and published continuously in the state of Montana for at least twelve (12) months immediately preceding such publication; the price for such publication and by whomsoever accomplished shall not exceed the minimum going rate charged any other advertiser for the same publication, set in the same size type and published for the same number of insertions.

History: En. Sec. 1, Ch. 157, L. 1921; re-en. Sec. 276, R. C. M. 1921; amd. Sec. 1, Ch. 137, L. 1951; amd. Sec. 1, Ch. 307, L. 1969; amd. Sec. 1, Ch. 385, L. 1973.

Amendments

The 1969 amendment increased the maximum rates for standard work from \$2 to \$2.25 per folio of 100 words for the first insertion, and from 90¢ to \$1.25 per folio for each subsequent insertion; and increased the maximum rates for rule and figure work from \$3 to \$3.75 per folio for the first insertion, and from 90¢ to \$1.25 per page for each subsequent insertion.

The 1973 amendment substituted "the minimum going rate charged any other

advertiser for the same publication, set in the same size type and published for the same number of insertions" at the end of the section for "the following rate and standard hereby established and prescribed as the maximum rate and standard for all publications as aforesaid" and for paragraphs (a) and (b) setting out specific maximum rates.

Repealing Clause

Section 2 of Ch. 307, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Cross-References

Printing defined, sec. 19-103.1.

82-1157. (283.1) Preference of Montana printers, etc.

Compiler's Notes

Section 101, Ch. 326, Laws 1974, substituted "department of administration" in this section for "state purchasing agent."

Cross-References

Printing defined, sec. 19-103.1.

CHAPTER 12—FIRE MARSHAL, STATE

Section

82-1201. Creation of office of state fire marshal—fire prevention advisory commission.

82-1202. Powers of the state fire marshal.

82-1202.1. Rules promulgated by state fire marshal—adoption of other standards—providing for a penalty for violation.

82-1202.2. Notice of public hearing—publication—adoption of rules—effective date.

82-1208. Special deputy fire marshals—acting fire marshal—fire marshal's employees.

82-1209. Investigation of fires.

82-1211. Penalty for violation of law.

82-1218. Entering of buildings for purpose of examination.

82-1231. Tax on fire insurance premiums for maintenance of state fire marshal's office.

82-1201. (2737) Creation of office of state fire marshal—fire prevention advisory commission. (1) There is an office of state fire marshal, which is under the supervision and control of the commissioner of insurance.

(2) The state fire marshal shall be appointed by the commissioner of insurance and shall serve at his pleasure.

(3) A person appointed state fire marshal shall:

(a) have at least ten (10) years of progressively responsible experience in fire protection; or

(b) a degree in engineering from a recognized institution of higher education and two (2) years' experience in fire protection; or

(c) a degree from a recognized institution of higher education in fire protection engineering or fire protection technology.

(4) Not later than thirty (30) days after this act becomes effective the commissioner of insurance shall appoint a fire prevention advisory commission composed of the following members:

(a) One person representing the fire insurance industry whose initial term shall be for one (1) year;

(b) One person representing industry whose initial term shall be for one (1) year;

(c) One person representing full-time paid fire departments whose initial term shall be for two (2) years;

(d) One person representing volunteer fire departments whose initial term shall be for two (2) years;

(e) One person representing architects of the state whose initial term shall be for three (3) years;

(f) One person representing the public whose initial term shall be for four (4) years;

(g) The commissioner of insurance.

After termination of the initial term, all members shall be appointed for four (4) year terms. Appointed members of the commission shall be reimbursed for meetings at the rate of twenty dollars (\$20) per day plus actual expenses including mileage, food, and lodging. The commissioner of insurance shall serve as chairman, and the state fire marshal shall serve as secretary of the commission.

History: En. Sec. 1, Ch. 148, L. 1911; re-en. Sec. 2737, R. C. M. 1921; amd. Sec. 1, Ch. 229, L. 1967.

and under the supervision and control of the state auditor and commissioner of insurance ex officio."

Amendments

The 1967 amendment completely re-wrote this section. Prior to amendment, it read, "There is hereby created and established the office of state fire marshal, which shall be a department of

Cross-References

Advisory commission abolished, sec. 82A-1208.

Marshal's office abolished and functions transferred, sec. 82A-1202(5).

82-1202. (2737.1) Powers of the state fire marshal. The state fire marshal shall:

(1) Make at least one inspection during every year, of each state institution, and submit a copy of the report to the state department of institutions with recommendations in regard to fire prevention, fire protection and to the public safety.

(2) Make at least one inspection during every year, of each unit of the Montana university system, and submit a copy of the report to the executive secretary of the university system with recommendations in regard to fire prevention, fire protection and to the public safety.

(3) Inspect public, business, or industrial buildings and require conformance to law or rules promulgated under the provisions of this act.

(4) Do all things necessary and convenient for carrying into effect the fire prevention laws of this state governing this act and may, adopt necessary rules for safeguarding lives and property from the hazards of fire and explosion after consultation with the fire prevention advisory

commission and approval by the commissioner of insurance. No rule shall become effective until after a public hearing held in the manner described in section 82-1202.2, R. C. M. 1947. If fire prevention rules are violated, the fire marshal may maintain an action to enjoin the use of all or a portion of a building or facility, or restrain a specific activity, until there is compliance with the rules.

(5) Rules relating to building and equipment standards covered by the state or a municipal building code are effective after approval by the department of administration and filing with the secretary of state.

History: En. Sec. 1, Ch. 124, L. 1929; amd. Sec. 1, Ch. 18, L. 1943; amd. Sec. 1, Ch. 278, L. 1947; amd. Sec. 93, Ch. 199, L. 1965; amd. Sec. 2, Ch. 229, L. 1967; amd. Sec. 24, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974.

Compiler's Notes

The compiler deleted the number "4" after "section" in the second sentence of subdivision (4) as superfluous.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

The 1969 amendment, in the first sentence in subdivision (4), substituted "adopt" for "promulgate" before "necessary rules"; in the second sentence, inserted "R. C. M. 1947" after "82-1202.2"; and, in the last sentence, deleted "promulgated by the fire marshal" after "fire prevention rules" and substituted "the fire marshal" for "he" before "may maintain"; and added subdivision (5).

The 1974 amendment substituted "department of administration" for "state building code council" in subdivision (5).

82-1202.1. Rules promulgated by state fire marshal—adoption of other standards—providing for a penalty for violation. (1) Rules promulgated by the state fire marshal by authority of section 82-1202, R. C. M. 1947, shall be reasonable and calculated to effect the purposes of this act. They shall include but not be limited to requirements for design, construction, installation, operation, storage, handling, maintenance or use of the following: structural requirements for various types of construction; building restrictions within congested districts; exit facilities from structures; fire alarm systems and fire extinguishing systems; fire emergency drills; flue and chimney construction; heating devices; electrical wiring and equipment; air conditioning, ventilating and other duct systems; refrigeration systems; flammable liquids; oil and gas wells; application of flammable finishes; explosives, acetylene, liquefied petroleum gas and similar products; calcium carbide and acetylene generators; flammable motion picture film, combustible fibres; hazardous chemicals; rubbish, open flame devices; parking of vehicles; dust explosions; lightning protection; and other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the department of administration and filing with the secretary of state.

(3) Standards of the National Fire Protection Association, United States Bureau of Standards, American Insurance Association Standards may be adopted in whole or in part by reference.

(4) Any person violating any rule made under the provisions of this section shall be guilty of a misdemeanor.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974.

Compiler's Notes

This section was amended twice in 1969, once by Ch. 120 and once by Ch. 366. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating both amendments. In the composite section the subsection added by Ch. 120 has been designated as (4) rather than (3).

Amendments

Chapter 120 of Laws 1969 substituted a requirement that rules promulgated by the state fire marshal "be reasonable and calculated to effect the purpose of this act" for a requirement that rules promulgated by the state fire marshal "establish minimum standards of fire protection requirements" in subsection (1), and added subsection (4).

Chapter 366 of Laws 1969 inserted subsection (2) and renumbered former subsection (2) as subsection (3).

The 1974 amendment substituted "department of administration" for "state building code council" in subsection (2).

82-1202.2. Notice of public hearing—publication—adoption of rules—effective date. Notice of the time and place of public hearing required by section 82-1202, R.C.M. 1947, shall be published at least five (5) times in at least two (2) newspapers of general circulation throughout the state. The last published notice shall appear not less than fifteen (15) days prior to the public hearing. A copy of the notice of public hearing shall be furnished by mail to any person who files his address with the fire marshal together with a request for such notification. Any person may appear before the state fire marshal and present testimony on proposed rules in the manner prescribed by the marshal. Following the public hearing, the state fire marshal may approve, approve in modified form, or disapprove a proposed rule. The state fire marshal shall specify the date when any new rule or change in an existing rule becomes effective. A new rule or change in an existing rule relating to building and equipment standards covered by the state or a municipal building code is effective upon approval of the state building code council and filing with the secretary of state.

History: En. 82-1202.2 by Sec. 4, Ch. 229, L. 1967; amd. Sec. 26, Ch. 366, L. 1969.

Amendments

The 1969 amendment added the last sentence.

Repealing Clause

Section 27 of Ch. 366, Laws 1969 read "Sections 66-2424, 66-2818, 69-2101 through 69-2103, 69-3701 through 69-3719, and 75-3103, R. C. M. 1947, are repealed."

82-1203, 82-1204. (2737.2, 2738) Repealed.

Repeal

These sections (Sec. 2, Ch. 148, L. 1911; Sec. 2, Ch. 124, L. 1929), relating to the

appointment of the state fire marshal and to violations of section 82-1202, were repealed by Sec. 14, Ch. 229, Laws 1967.

82-1208. (2742) Special deputy fire marshals—acting fire marshal—fire marshal's employees. (1) In an emergency, or during the absence or disability of the state fire marshal, the attorney general may appoint an acting fire marshal, who shall perform the duties of the office, or any duty which may be assigned to him, such appointment to cease when the necessity therefor has been relieved.

(2) The state fire marshal may appoint special deputy state fire marshals throughout the state and define their duties. When performing

these duties or attending a training course conducted by the state fire marshal, special deputy fire marshals may be paid at a rate not to exceed forty dollars (\$40) per day plus per diem allowance for expenses and mileage at the same rates specified for state employees.

(3) The fire marshal may appoint assistants and clerical employees to perform duties as specified by the marshal to assist in carrying out the duties assigned him by law.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R. C. M. 1921; amd. Sec. 5, Ch. 229, L. 1967; amd. Sec. 1, Ch. 184, L. 1973.

Amendments

The 1967 amendment substantially re-

wrote this section. For previous text, see parent volume.

The 1973 amendment substituted "attorney general" for "commissioner of insurance" in subsection (1); and increased the rate of pay of special deputy fire marshals from \$20 to \$40 per day.

82-1209. (2743) Investigation of fires. (1) The cause, origin, and circumstances of each fire, by which property has been destroyed or damaged, shall be investigated to determine the exact cause and circumstances. The state fire marshal may superintend and direct the investigation if he deems it necessary.

(2) If the fire occurs within a municipality or organized fire district, the chief of the fire department shall make the investigation. If the fire occurs outside a municipality or organized fire district, the county sheriff shall make the investigation. If it appears that the fire was of suspicious origin, or if there was a loss of human life, the official responsible for the investigation shall notify the state fire marshal within twenty-four (24) hours, and shall file a written report of the cause with the state fire marshal within ten (10) days.

(3) If the property was insured, as soon as any adjustment has been made, a person representing the insurance company shall notify the state fire marshal of the amount of adjustment and the apparent cause and circumstances of the fire on forms furnished by the state fire marshal.

(4) Each official responsible for investigating fires shall file a fire incident report on each and every fire with the state fire marshal. Reports shall be on forms, and shall contain information, prescribed by the state fire marshal. These reports shall be sent to the state fire marshal on a weekly basis.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R. C. M. 1921; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973.

Amendments

The 1967 amendment substantially re-wrote this section. For previous text, see parent volume.

The 1973 amendment substituted "the exact cause and circumstances" for "whether the fire was the result of carelessness or design" in the first sentence of subsection (1); substituted "If the property was insured" for "If it appears that the fire was of suspicious origin, if there

was a loss of human life, or if the property loss exceeded one hundred dollars" at the beginning of subsection (3); substituted "state fire marshal" for "official responsible for investigating the fire" in the middle part of subsection (3); added "on forms furnished by the state fire marshal" at the end of subsection (3); deleted "On or before February 15 of each year" from the beginning of subsection (4); substituted "incident report on each and every fire" in the first sentence of subsection (4) for "loss report for the immediately preceding calendar year"; and added the third sentence to subsection (4).

82-1210. (2744) Repealed.**Repeal**

This section (Sec. 7, Ch. 148, L. 1911), relating to fire marshal's investigations,

was repealed by Sec. 14, Ch. 229, Laws 1967.

82-1211. (2745) Penalty for violation of law. Any person who fails to comply with the requirements of section 82-1209, R.C.M. 1947, shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200).

History: En. Sec. 8, Ch. 148, L. 1911; re-en. Sec. 2745, R. C. M. 1921; amd. Sec. 7, Ch. 229, L. 1967.

Amendments

The 1967 amendment substituted "Any person who fails to comply with the re-

quirements of section 82-1209, R. C. M. 1947" for "An officer named in the last two preceding sections who neglects to comply with any requirements of this chapter"; and made minor changes in style.

82-1218. (2752) Entering of buildings for purpose of examination. The state fire marshal, his deputies and subordinates, the chief of the fire department of each municipality or district where a fire department is established, or the county sheriff where no fire department exists, at all reasonable hours may enter into all buildings and upon all premises within their jurisdiction for the purpose of determining whether the building or premise conforms to laws and rules relating to fire hazards and fire safety.

History: En. Sec. 15, Ch. 148, L. 1911; re-en. Sec. 2752, R. C. M. 1921; amd. Sec. 8, Ch. 229, L. 1967.

Amendments

The 1967 amendment substituted "municipality or district" for "city or village" before "where a fire"; substituted "county sheriff" for "mayor of a city or village"

before "where no fire"; deleted "or the justice of the peace of a township in territory without the limits of a city or village" before "at all reasonable hours"; and substituted "determining whether the building or premise conforms to laws and rules relating to fire hazards and fire safety" for "examination" at the end of the section.

82-1227, 82-1228. (2757, 2758) Repealed.**Repeal**

These sections (Secs. 20, 21, Ch. 148, L. 1911), relating to the compensation of

fire department officials, were repealed by Sec. 14, Ch. 229, Laws 1967.

82-1230. (2760) Oath of marshal and deputy.**Cross-References**

Bonds of state officers and employees, sec. 6-105 et seq.

82-1231. (2761) Tax on fire insurance premiums for maintenance of state fire marshal's office. Each insurer authorized to effect insurance risks enumerated in subsection two of section 11-1919, doing business in this state shall pay to the state auditor and commissioner of insurance ex officio, during the month of February or March in each year, in addition to the taxes on premiums required by law to be paid by it, a tax of three-fourths of one per cent ($\frac{3}{4}$ of 1%) on the fire portion of the direct premiums on such risks received during the calendar year next preceding, after deducting cancellations and return premiums.

History: En. Sec. 24, Ch. 148, L. 1911; re-en. Sec. 2761, R. C. M. 1921; amd. Sec. 1, Ch. 83, L. 1941; amd. Sec. 1, Ch. 162, L. 1947; amd. Sec. 1, Ch. 182, L. 1959; amd. Sec. 1, Ch. 312, L. 1969; amd. Sec. 1, Ch. 110, L. 1971.

Amendments

The 1969 amendment raised the tax from "one-fourth of one per cent ($\frac{1}{4}$ of 1%)" to "one-half of one per cent ($\frac{1}{2}$ of 1%)."

The 1971 amendment increased the tax from one-half of one per cent to three-fourths of one per cent; and made a minor change in phraseology.

CHAPTER 13—GOVERNOR—POWERS—RECORDS—SECRETARY

Section

- 82-1304.1. Vacancy in office of governor and lieutenant governor.
- 82-1304.2. President of senate, speaker of house unable to assume office of governor—election by legislature.
- 82-1304.3. Successor to serve until next general election.
- 82-1304.4. Governor and lieutenant governor incapacitated.
- 82-1304.5. Duties and rights of acting governor.
- 82-1311. "Governor-elect" defined.
- 82-1312. Duties of department of administration.
- 82-1313. State employees chosen by governor-elect—compensation—employees of the department of administration to assist governor-elect.
- 82-1314. Funds—department of administration to request an appropriation.
- 82-1315. Review of executive branch—report to legislature.

82-1301. (124) Powers and duties of governor.

Compiler's Notes

Sections 23-103 to 23-106 referred to in subdivision 10, were repealed by Sec. 248,

Ch. 368, Laws of 1969. For similar provisions in current law, see secs. 23-2901 to 23-2903.

82-1304.1. Vacancy in office of governor and lieutenant governor. (1) If the offices of both the governor and the lieutenant governor become vacant, the president of the senate shall become governor and shall appoint a lieutenant governor.

(2) If the president of the senate is unable to assume the office of governor, the speaker of the house shall become governor and a lieutenant governor shall be elected in accordance with the provision of section 2 [82-1304.2] hereafter.

History: En. Sec. 1, Ch. 29, L. 1973.

Title of Act

An act to provide for succession to the

office of governor to implement article VI, section 6(1) and section 14(7) of the 1972 Montana constitution.

82-1304.2. President of senate, speaker of house unable to assume office of governor—election by legislature. If neither the president of the senate nor the speaker of the house of representatives is able to assume the office of governor, the legislature, meeting in joint session, shall elect a governor and a lieutenant governor. When the speaker of the house becomes governor, the legislature will meet in joint session, and shall elect a lieutenant governor.

History: En. Sec. 2, Ch. 29, L. 1973.

82-1304.3. Successor to serve until next general election. The successor to the governor and the lieutenant governor shall serve until the next

82-1304.4 STATE OFFICERS, BOARDS AND DEPARTMENTS

general election and shall have all the powers, duties and emoluments of the respective offices.

History: En. Sec. 3, Ch. 29, L. 1973.

82-1304.4. Governor and lieutenant governor incapacitated. (1) If both the governor and lieutenant governor are unable to serve as governor, the president of the senate shall become acting governor until the governor or lieutenant governor is able to resume the duties of the office.

(2) If the president of the senate is unable to become acting governor, the speaker of the house of representatives shall become acting governor.

History: En. Sec. 4, Ch. 29, L. 1973.

82-1304.5. Duties and rights of acting governor. An acting governor shall have all the rights, duties and emoluments of the office of governor while he is so acting.

History: En. Sec. 5, Ch. 29, L. 1973.

82-1309. Enemy attack upon United States and governor, etc.

Cross-References

Line of succession extended to legislators, sec. 82-3802.

82-1310. Emergency temporary seat of government—designation.

Cross-References

Moving seat of government after attack, sec. 82-3807.

82-1311. "Governor-elect" defined. As used in this act, unless the context clearly indicates otherwise:

(1) "Governor-elect" means the person elected at a general election to the office of governor who is not the incumbent governor.

History: En. Sec. 1, Ch. 47, L. 1969.

Title of Act

Compiler's Notes

As enacted, this section contained no subdivision (2).

An act to provide for orderly transition of state government after the election of a new governor by providing funds and other necessary assistance for the governor-elect.

82-1312. Duties of department of administration. The department of administration shall provide the governor-elect and his necessary staff with suitable office space in the capitol building, together with furnishings, supplies, equipment, and telephone service for the period between the general election and the inauguration.

History: En. Sec. 2, Ch. 47, L. 1969; amd. Sec. 98, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department of administration" for "state controller."

82-1313. State employees chosen by governor-elect—compensation—employees of the department of administration to assist governor-elect. The governor-elect may obtain the assistance of persons of his own choos-

ing, between the general election and inauguration, and they shall receive reasonable compensation for their services. These persons shall be state employees, but they shall not be subject to any civil service or personnel laws or rules of the state. In addition, the governor-elect may request that the department of administration assign one (1) or more employees of the department of administration to assist the governor-elect and his staff in the study and interpretation of information. Employees of the department of administration shall be assigned for the time necessary between the general election and the inauguration.

History: En. Sec. 3, Ch. 47, L. 1969; amd. Sec. 98, Ch. 326, L. 1974.

department of administration" for "the state controller" after "the governor-elect may request that."

Amendments

The 1974 amendment substituted "the

82-1314. Funds—department of administration to request an appropriation. The funds necessary to carry out the provisions of this act shall be included in the appropriation request of the department of administration to the legislative assembly meeting in regular session immediately prior to a general election when a governor will be chosen.

History: En. Sec. 4, Ch. 47, L. 1969; amd. Sec. 98, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department of administration" for "state controller."

82-1315. Review of executive branch—report to legislature. (1) The office of the governor shall continuously study, and evaluate the organizational structure, management practices, and functions of the executive branch and of each agency and the governor shall, by executive order or other means within the authority granted to him, take action to improve the manageability of the executive branch.

(2) The governor shall submit a report to each regular legislative session concerning the duties of his office under subsection (1) of this section and his recommendations, if any, for the transfer of functions between agencies, the elimination of unnecessary functions, or other recommendations to improve the manageability of the executive branch.

History: En. 82-1315 by Sec. 1, Ch. 238, L. 1973.

state government and report to the legislature.

Title of Act

An act requiring the office of the governor to review the executive branch of

Expiration Date

Section 2 of Ch. 238, Laws 1973 read "This act shall expire after June 30, 1975."

CHAPTER 15—HAIL INSURANCE, STATE BOARD OF

Section

- 82-1501. State board of hail insurance—creation and powers—insurance, how effected.
- 82-1506. Tax for hail insurance—limitation on levy—liens, effect of—mortgages—levies, when payable—hail insurance districts—rates.
- 82-1512. Duty of agent of the department of revenue—election of benefits of law.
- 82-1515. Appraisers—appointment—qualifications and duties.
- 82-1516. Appointment of appraisers in case of dissatisfaction with official adjustment.
- 82-1519. Compensation of chairman and officers—report.

82-1501. (350) State board of hail insurance—creation and powers—insurance, how effected. (1) There is a state board of hail insurance of five members consisting of the state treasurer, the director of agriculture, who is secretary of the board, and three other members to be appointed by the governor from names submitted by farmer organizations having a general membership throughout the state. The governor shall designate one of the appointive members to act as chairman of the board. Whenever the term of any member expires, either by death, resignation, removal for cause, or expiration of his term of office, the governor shall appoint his successor, and shall also appoint one of the board for chairman in case of a vacancy in that office.

(2) Each appointive member of the board shall be appointed for three years, except where such appointment is made to fill a vacancy on the board, in which event such appointee shall fill out the unexpired term of the member whose place he fills. All members of the board shall be subject to removal for cause by the governor; the board shall hold meetings when necessary and essential for the proper conduct of its business, at the state capitol in the office of the secretary, and is hereby authorized, directed and empowered to make rules as it may from time to time find practical, necessary and beneficial for the administration of this act. It shall prescribe blank forms for all purposes necessary, proper and incidental to the effective operation and enforcement of this act; it shall prescribe a special form outlining the purposes, scope and benefits of this act in furnishing protection against loss by hail, at the actual cost of the risk to all taxpayers who may elect to become subject to the provisions of this act, the form to be submitted by the agent of the department of revenue in each county at the time in which the regular assessments of property are made by the agents, to each farmer in each county in the state engaged in growing of crops subject to injury or destruction by hail, on which forms each such farmer taxpayer shall signify whether he desires to become subject to the provisions of this act or not.

(3) Every farmer taxpayer who signifies his desire to become subject to the provisions of this act, shall file in the office of the county assessor the properly filled out form not later than August 15th, and shall be chargeable with the tax on lands growing crops subject to injury or destruction by hail, hereinafter provided for, and shall share in the protection and benefits under the hail insurance provisions of this act. Such application for hail insurance shall be in full force and effect at noon the day following the acceptance of the same by the county assessor. Provided, however, that this act shall not be so construed as to empower anyone except the actual owner of the land to make such land subject to the hail tax provided in this act.

History: En. Sec. 1, Ch. 169, L. 1917; amd. Sec. 1, Ch. 17, Ex. L. 1918; amd. Sec. 1, Ch. 141, L. 1921; re-en. Sec. 350, R. C. M., 1921; amd. Sec. 1, Ch. 40, L. 1923; amd. Sec. 58, Ch. 391, L. 1973; amd. Sec. 140, Ch. 218, L. 1974.

Amendments

The 1973 amendment substituted "agent of the department of revenue" for "county assessor" and "agents" for "assessors" in the third sentence of subdivision (2) in

order to implement article VIII, section 3 of the 1972 constitution.

The 1974 amendment substituted "director of agriculture" for "commissioner of agriculture, labor and industry" and "farmer organizations" for "farmer societies" in subsection (1); deleted "to serve for three years" after "appointive members" in the second sentence of subsection (1); substituted "administration of this act" for "conduct of the department of hail insurance, subject to the

provisions of this act" in the second sentence of subsection (2); deleted "It shall have full charge of said department as herein provided for" and "and furnish such forms to all public officers

respectively charged, with the performance of any official duty in connection therewith" from the second sentence of subsection (2); and made minor changes in phraseology and punctuation.

82-1506. (351) Tax for hail insurance—limitation on levy—liens, effect of—mortgages—levies, when payable—hail insurance districts—rates.

(1) A tax is hereby authorized and directed to be levied on all lands in this state growing crops subject to injury or destruction by hail, the owners of which have elected to become subject to the provisions of this act. The state board of hail insurance shall annually estimate as near as may be possible, the amount required to pay all losses, interest on warrants and costs of administration, and shall recommend a levy to be made on each kind of land respectively, subject to the provisions of this act, to the state department of revenue. The rates recommended to apply on the lands of owners shall be applied in the same proportions to the crops of those insured on a personal assessment basis. It is hereby provided, however, that such tax shall not exceed in any one (1) year the sum of one dollar and twenty cents (\$1.20) per acre on lands sown to grain crops on nonirrigated lands, and the sum of two dollars and forty cents (\$2.40) per acre on irrigated lands, also it shall not exceed one dollar and twenty cents (\$1.20) per acre on lands producing hay crops; and provided further, that if the tax required to pay the estimated losses, interest on warrants and costs of administration be less than sixty cents (60¢) per acre on lands sown to grain crops on nonirrigated lands and one dollar and twenty cents (\$1.20) per acre on irrigated lands, and a proportionate amount on lands sown to hay crops, the said board of hail insurance must recommend a tax levy sufficient to raise the full amount thereof.

(2). * * * [Same as parent volume.]

(3) The state department of revenue is hereby empowered and it is made its duty to prescribe such levies annually to be made against lands growing crops subject to injury or destruction by hail which are subject to this act, in accordance with the recommendation of the state board of hail insurance. Such tax levies respectively shall be chargeable to the lands of each taxpayer who shall elect to become subject to this act and shall be extended on the tax roll and collected by the officers charged with such duties in the manner and form as are other property taxes and if not paid shall be a lien on the lands against which the same are levied as are other property taxes. Provided, however, that the lien as provided above shall in no way affect mortgages that are of record at the time of the approval of this act. The lien of any mortgage filed subsequent to the passage and approval of this act shall be subsequent to any lien for hail insurance hereafter levied thereon. All applicants securing hail insurance on crop liens as heretofore provided shall be subject to the same charges per acre as provided herein to be made on land. Notice of such assessment shall be mailed to each person insured, by the county treasurer in the same manner as are all other notices of taxes due. Said assessment shall be payable at the office of the county treasurers of each respective county. All insurance levies whether levied against land or

in the form of special assessments secured by crop liens, shall be payable in full, and not in semiannual payments, on or before November 30th of each year in which such levies are made.

(4). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R. C. M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in subsections (1) and (3).

82-1512. (356) Duty of agent of the department of revenue—election of benefits of law. It shall be the duty of the agent of the department of revenue in each county in the state, at the time in which the annual assessment of property is made, to explain to each taxpayer engaged in the growing of crops subject to injury or destruction by hail, the provisions of this act and the protection afforded thereby, and to request each such taxpayer to certify, on the forms provided for such purpose, if such taxpayer desires to become subject to this act and liable for the tax levies provided hereby, and thereby eligible to the benefits and protection of this act; and each such taxpayer who so elects to become subject to this act shall be liable for the taxes levied for hail insurance, and shall participate in the benefits and protection afforded by this act; provided, that the owners of lands worked by others under lease or contract shall elect if such lands shall be subject to the tax levies herein provided for, and the crops grown thereon protected for hail insurance, or the lessee of such land may tender payment of the tax levied for hail insurance to protect his crops, in cash, to the officer authorized to receive same, whereupon such crops shall become eligible to the benefits and protection afforded by this act for hail insurance.

History: En. Sec. 5, Ch. 169, L. 1917; re-en. Sec. 356, R. C. M. 1921; amd. Sec. 60, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "the

agent of the department of revenue in each county" for "county assessor" near the beginning of the section in order to implement article VIII, section 3 of the 1972 constitution.

82-1515. (359) Appraisers — appointment — qualifications and duties. The state board of hail insurance shall, as soon as practicable, each year appoint a sufficient number of appraisers to appraise all losses by hail incurred under this act in the various counties. The men so appointed shall be actively engaged in farming or shall have had practical experience in farming and shall be selected from names submitted by regularly organized farmers societies in the various counties. If the recommendations are not made as provided above, then the state board shall select the appraisers from men actively engaged in farming or men who have had practical experience in farming as heretofore provided. Provided, further, that the state board of hail insurance may call on one or more of the duly appointed appraisers for the adjustment of each and every loss and the said appraisers shall promptly report their findings to the state board

of hail insurance, according to the rules provided by the said state board. Provided, further, that no appraiser who shall be a relative, attorney, agent, employee or creditor or in any manner interested by lien, mortgage or otherwise in the crop injured or destroyed, shall assist in adjusting any such loss. The state board may in case of emergency appoint more than three appraisers in any county. Also it may send any duly appointed appraiser or appraisers into any county as the occasion may require.

History: En. Sec. 8, Ch. 169, L. 1917; amd. Sec. 5, Ch. 34, L. 1919; amd. Sec. 4, Ch. 141, L. 1921; re-en. Sec. 359, R. C. M. 1921; amd. Sec. 1, Ch. 79, L. 1973.

Amendments

The 1973 amendment substituted "a sufficient number of appraisers" for "three men in each county" in the first sentence of this section.

82-1516. (360) Appointment of appraisers in case of dissatisfaction with official adjustment. (1) In case the party that has sustained the loss is dissatisfied with and refuses to accept the adjustment made by the official appraiser then he shall have the right to appeal to the state board of hail insurance, provided however, he shall make such appeal by registered mail within ten (10) days after receiving the adjustment offer of the state board in writing. Also it is further provided that the state board of hail insurance may require the posting of a cash bond of ten dollars (\$10) with the request for reappraisal of the first adjustment. In cases where the board requires the posting of the ten dollar (\$10) bond, the board may retain it if no increase is allowed. If an increase is obtained, the board will return the bond to the claimant. In case the adjuster who makes the second appraisal fails to secure an agreement the claimant may at his option submit the matter to arbitration as herein provided or sue the state board of hail insurance in the district court of the county where the loss occurred within ninety (90) days from the date of receipt of written notice of the second appraisal. Such actions shall be trials de novo and the Montana Rules of Civil Procedure shall apply. If the claimant elects to submit the matter to arbitration he shall then appoint one disinterested person as appraiser, and the official appraiser shall appoint another person as appraiser, and the two shall select a third disinterested person and the three shall then proceed to adjust the loss in the same manner as specified in section 82-1515 and the judgment of the majority shall be the judgment of said appraisers and shall be binding upon both parties as the final determination of said loss; provided, however, that if the insured does not recover a greater sum than allowed by the official appraiser in the first instance, he shall pay the expenses of the said three appraisers and their witnesses in making said adjustment, but if he is awarded a larger sum then the same shall be paid by the state board of hail insurance.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 9, Ch. 169, L. 1917; amd. Sec. 6, Ch. 34, L. 1919; re-en. Sec. 360, R. C. M. 1921; amd. Sec. 10, Ch. 40, L. 1923; amd. Sec. 4, Ch. 33, L. 1949; amd. Sec. 1, Ch. 69, L. 1963; amd. Sec. 76, Ch. 147, L. 1963; amd. Sec. 1, Ch. 170, L. 1967.

Amendments

The 1967 amendment added "within ninety (90) days from the date of receipt of written notice of the second appraisal" at the end of the fifth sentence of subsection (1).

82-1519. (363) Compensation of chairman and officers—report. It shall be the duty of all public officers to perform the duties relative to hail insurance under this act, without other compensation than that allowed by law. The chairman of the state board of hail insurance shall receive a salary in such amount as may be specified by the legislative assembly in the appropriation to the board of hail insurance and all appointed officers and employees under this act shall be allowed the per diem and mileage allowed state employees. The compensation of all appointed officers and employees of the board shall be fixed by the state board of hail insurance. If the legislative assembly does not specify the maximum salary for the head of the agency, the salary shall be fixed by the state board of hail insurance after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry.

The chairman of the state board of hail insurance shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 12, Ch. 169, L. 1917; amd. Sec. 2, Ch. 183, L. 1921; re-en. Sec. 363, R. C. M. 1921; amd. Sec. 12, Ch. 40, L. 1923; amd. Sec. 1, Ch. 165, L. 1929; amd. Sec. 1, Ch. 53, L. 1951; amd. Sec. 1, Ch. 165, L. 1961; amd. Sec. 1, Ch. 188, L. 1965; amd. Sec. 11, Ch. 237, L. 1967; amd. Sec. 38, Ch. 93, L. 1969.

such amount * * * of hail insurance" for "not in excess of six hundred dollars (\$600) per month" in the second sentence, and added the last two sentences in the first paragraph.

The 1969 amendment substituted the reporting requirements of section 82-4002 for former provision requiring annual financial reports in the second paragraph.

Amendments

The 1967 amendment substituted "in

CHAPTER 17—LIEUTENANT GOVERNOR

Section

- 82-1702.1. Office of lieutenant governor created.
- 82-1702.2. Powers of lieutenant governor.
- 82-1702.3. Duties of lieutenant governor.
- 82-1703. Compensation—when acting as governor.

82-1701, 82-1702. (130, 131) Repealed.

Repeal

Sections 82-1701, 82-1702 (Sees. 390, 391, Pol. C. 1895), relating to the duties and compensation of the lieutenant governor,

were repealed by Sec. 6, Ch. 297, Laws 1973. For new law, see sees. 82-1702.1 to 82-1702.3.

82-1702.1. Office of lieutenant governor created. There is created an office of lieutenant governor.

History: En. Sec. 1, Ch. 297, L. 1973.

Title of Act

An act to provide for the office of lieutenant governor implementing article VI, section 1(3) of the 1972 Montana consti-

tution; amending sections 25-501 and 82-1703, R. C. M. 1947; and repealing sections 82-1701, 82-1702 and 94-5418, R. C. M. 1947, which deal with the lieutenant governor as president of the senate.

82-1702.2. Powers of lieutenant governor. The lieutenant governor may:

- (1) prescribe rules for the administration of the office;

(2) hire personnel for the office and establish policy to be followed by such personnel; and

(3) compile and submit a budget for the office.

History: En. Sec. 2, Ch. 297, L. 1973.

82-1702.3. Duties of lieutenant governor. The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor.

History: En. Sec. 3, Ch. 297, L. 1973.

82-1703. (132) Compensation—when acting as governor. When the lieutenant governor acts as governor, he is entitled to receive during the time he so acts, the compensation which the governor, if acting, would be entitled to receive for such time.

History: En. Sec. 392, Pol. C. 1895; re-en. Sec. 152, Rev. C. 1907; re-en. Sec. 132, R. C. M. 1921; amd. Sec. 5, Ch. 297, L. 1973.

tenant governor, to any other compensation or mileage" from the end of the section.

Repealing Clause

Amendments

The 1973 amendment deleted "but during such time he is not entitled, as lieu-

Section 6 of Ch. 297, Laws 1973 read "Sections 82-1701, 82-1702 and 94-5418, R. C. M. 1947, are repealed."

CHAPTER 18—MARSHAL OF SUPREME COURT

82-1804. (369) Accounts of marshal.

Compiler's Notes

Section 99, Ch. 326, Laws 1974, substituted "department of administration"

in this section for "state board of examiners."

CHAPTER 19—STATE PURCHASES

- Section
- 82-1901.1. Definition.
 - 82-1902. Duties of department.
 - 82-1903. Maintenance of warehouses.
 - 82-1904. Authority to purchase.
 - 82-1905. Payment for purchases by department.
 - 82-1906. Contracts for printing and supplies.
 - 82-1908. Department may require tests.
 - 82-1909. Furnishing of stationery, etc.
 - 82-1910. [Transferred.]
 - 82-1911. Property returns.
 - 82-1917. Requisitions for bids required—low bidder to receive contract.
 - 82-1914. Sale of state property.
 - 82-1915. Contracts for supplies of state agencies.
 - 82-1915.1. Data processing equipment, etc.
 - 82-1916. Printing and publications.
 - 82-1916.1. Supervision of public printing.
 - 82-1917. Requisitions for supplies—manner of letting contracts.
 - 82-1918. Contracts limited to three years—building laws.
 - 82-1919. Purchase of fresh fruits and vegetables—emergency purchases.
 - 82-1920. Impartiality to be shown in letting contracts—preference to residents.
 - 82-1921. Record of bids—contracts.
 - 82-1922. Transfer of contract forbidden—agreement between bidders invalidates contracts—interest in contracts by state officers forbidden—penalty.
 - 82-1923. Inspection of property and warehouses of state.
 - 82-1924. State contracts to be awarded to lowest responsible resident bidder.
 - 82-1925. Residence defined—domestic corporations.

- 82-1925.1. State department of revenue to determine residency of contractor—endorsement upon license—applications for redetermination of residency—furnishing lists—department's determination as prima facie evidence.
- 82-1926. Contract provision for preference to Montana products—failure to comply—federal-aid projects.
- 82-1927. Restriction on submitting additional bids when working beyond contract time.
- 82-1928. Excusable delays not considered working beyond contract time.
- 82-1929. Short title.
- 82-1930. Statement of purpose and policy.
- 82-1931. Definitions.
- 82-1932. Small business set-asides—designation.
- 82-1933. Insufficient bids—withdrawal of set-asides.
- 82-1934. Advertisement of successful bidder.
- 82-1935. Preference to Montana small business.
- 82-1936. Construction with other sections.
- 82-1937. Severability.
- 82-1938. Policy.
- 82-1939. Definition.
- 82-1940. Contracts negotiable without competitive bidding under certain circumstances.

82-1901. (284) Repealed.

Repeal

Section 82-1901 (Sec. 1, Ch. 197, L. 1921; Sec. 12, Ch. 194, L. 1951), relating to creation of the state purchasing department and agent, was repealed by Sec. 103, Ch. 326, Laws of 1974.

82-1901.1. Definition. Unless the context requires otherwise, in this chapter “department” means the department of administration provided for in Title 82A, chapter 2.

History: En. 82-1901.1 by Sec. 57, Ch. 326, L. 1974.

82-1902. (285) Duties of department. The department shall purchase, or direct and supervise the purchase and sale of all supplies of whatever nature necessary for the proper transaction of the business of every state agency, institution, or official.

History: En. Sec. 2, Ch. 197, L. 1921; re-en. Sec. 285, R. C. M. 1921; amd. Sec. 1, Ch. 80, L. 1961; amd. Sec. 58, Ch. 326, L. 1974.

Amendments

The 1974 amendment rewrote this section which described the duties of the former state purchasing agent. For prior law, see parent volume.

82-1903. (286) Maintenance of warehouses. The department may maintain, rent, lease, or construct warehouses.

History: En. Sec. 3, Ch. 197, L. 1921; re-en. Sec. 286, R. C. M. 1921; amd. Sec. 2, Ch. 80, L. 1961; amd. Sec. 59, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted “de-

partment” for “state purchasing agent”; deleted a clause giving the former agent power to issue rules for the conduct of his business; and made minor changes in phraseology.

82-1904. (287) Authority to purchase. An estimate or requisition presented by an agency or state official in control of the appropriation or fund against which such contract or purchase is to be charged, must be approved by the department, and this shall be full authority for any contract and any purchase made by the department.

History: En. Sec. 4, Ch. 197, L. 1921; re-en. Sec. 287, R. C. M. 1921; amd. Sec. 1, Ch. 17, L. 1925; amd. Sec. 1, Ch. 51, L. 1939; amd. Sec. 3, Ch. 80, L. 1961; amd. Sec. 60, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state purchasing agent"; and made minor changes in phraseology.

82-1905. (288) Payment for purchases by department. All valid claims on account of such contract and purchases negotiated by the department shall be audited and paid from the sums severally set aside for the use of the department by the contract and purchase estimate or requisition.

History: En. Sec. 5, Ch. 197, L. 1921; re-en. Sec. 288, R. C. M. 1921; amd. Sec. 4, Ch. 80, L. 1961; amd. Sec. 61, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state purchasing agent."

82-1906. (289) Contracts for printing and supplies. The department has exclusive power to contract for all printing and to purchase, sell, or otherwise dispose of, or to authorize, regulate, and control the purchase, sale, or other disposition of, all materials and supplies, service, equipment, and other physical property of every kind, required by a state institution or agency. It shall purchase or cause to be purchased all needed commissary supplies, and all raw material and tools necessary for any manufacturing carried on at any of the institutions; sell all manufactured articles, and collect the money, and generally regulate and control all purchases by any state agency, or institution. It shall also furnish, repair, and maintain the executive residence for the governor. The department shall remit to the state treasurer all moneys received from the sale of property belonging to the state, and these moneys shall be credited to the general fund by the treasurer.

History: En. Sec. 6, Ch. 197, L. 1921; re-en. Sec. 289, R. C. M. 1921; amd. Sec. 5, Ch. 80, L. 1961; amd. Sec. 62, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state purchasing agent"; and made minor changes in phraseology, punctuation and style.

82-1908. (291) Department may require tests. The department may require any agency or any of the educational institutions of the state to perform any tests required by the department for information in determining the character and quality of the articles and commodities to be purchased and used by the state.

History: En. Sec. 8, Ch. 197, L. 1921; re-en. Sec. 291, R. C. M. 1921; amd. Sec. 63, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state purchasing agent"; and made minor changes in phraseology.

82-1909. (292) Furnishing of stationery, etc. All stationery, printing, paper, fuel, and lights used in the legislative and other agencies of government, and the printing, binding, and distribution of the laws, journals, and department reports and other printing and binding, and repairing and furnishing the halls and rooms used for the meeting of the legislative assembly and its committees, shall be procured by the department as provided in this chapter.

History: En. Sec. 9, Ch. 197, L. 1921; re-en. Sec. 292, R. C. M. 1921; amd. Sec. 1, Ch. 69, L. 1949; amd. Sec. 6, Ch. 80, L. 1961; amd. Sec. 64, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state purchasing agent"; and made minor changes in phraseology.

82-1910. [Transferred.]

Compiler's Notes

Section 65, Ch. 326, Laws of 1974 re-numbered this section as sec. 82-1916.1.

82-1911. (293.1) Property returns. All persons in charge of any state property, must, upon request of the department, furnish a sworn statement of all personal property in his possession or under his charge belonging to the state, together with an estimate of its value, and must furnish any other information in connection therewith, as the department requires.

History: En. Sec. 1, Ch. 66, L. 1923; amd. Sec. 66, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state purchasing agent"; and made minor changes in phraseology.

82-1913. (293.3) Advertising for bids required—low bidder to receive contract. The department in making purchase of supplies and equipment under this chapter, or under the laws of the state must advertise as hereinafter provided, and award contracts in the name of the state for such supplies and equipment to the lowest responsible bidder, except as provided in this chapter.

History: En. Sec. 3, Ch. 66, L. 1923; amd. Sec. 67, Ch. 326, L. 1974.

partment" for "state purchasing agent"; substituted "this chapter" for "this act"; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

82-1914. (293.4) Sale of state property. (1) The department has exclusive power, subject to the approval of the governor, to sell, or otherwise dispose of, or to authorize the sale or other disposition of, all materials and supplies, service, equipment, or other personal property of every kind now owned by the state of Montana, but not needed or used by any state institution or by any department of state government. However, if a state institution or agency needs and requests the materials, etc., to be disposed of, that institution or agency, upon the approval of the governor, may receive the materials, etc. requested.

(2) All sales of highway equipment shall be by public auction or sealed bids and all proceeds received by the department from the sale of all material, supplies, equipment and all other personal property of the department of highways shall be placed in the highway account of the earmarked revenue fund.

History: En. Sec. 4, Ch. 66, L. 1923; amd. Sec. 74, Ch. 199, L. 1965; amd. Sec. 1, Ch. 11, L. 1971; amd. Sec. 68, Ch. 326, L. 1974.

paragraph, providing that the proceeds from the sale of property of the state highway commission be placed in its earmarked revenue fund.

Amendments

The 1971 amendment added the second

The 1974 amendment substituted "department" for "state controller" in the first sentence of subsection (1) and in

subsection (2); added the second sentence in subsection (1); substituted "department of highways" for "state highway commission" in subsection (2); and made minor changes in phraseology and style.

Effective Date

Section 2 of Ch. 11, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 2, 1971.

82-1915. (293.5) Contracts for supplies of state agencies. (1) Unless otherwise provided by law, the department has exclusive power, subject to the approval of the governor, to contract with the lowest bidders, for the furnishing of all supplies, stationery, paper, fuel, water, lights, and other articles required by the legislative assembly and all other state agencies and institutions.

(2) Before any contract is let, the department must advertise in such manner and for such time as provided in this chapter for sealed proposals for all the supplies or services mentioned in this section.

History: En. Sec. 5, Ch. 66, L. 1923; amd. Sec. 69, Ch. 326, L. 1974.

Service Contract

Contract to provide janitorial services, maintenance service and supplies for capitol complex required competitive bidding for its award. State ex rel. Great Falls Mr. Klean v. Montana State Board of Examiners, 153 M 220, 456 P 2d 278.

Amendments

The 1974 amendment substituted "department" for "state purchasing agent" in subsections (1) and (2); substituted "this chapter" for "this act" in subsection (2); and made minor changes in phraseology and style.

82-1915.1. Data processing equipment, etc. The department shall adopt rules governing the procurement and utilization of data processing equipment, programs and data processing communication networks, duplicating and copying equipment, and equipment generally prescribed for automatic typing. The department shall supervise the procurement and location of this equipment, for all state agencies.

History: En. 82-1915.1 by Sec. 70, Ch. 326, L. 1974.

82-1916. (293.6) Printing and publications. (1) The department has exclusive power, subject to the approval of the governor, to contract for all printing for any purpose used by the state in any state office, elective or appointive, agency, or institution except the printing of the decisions of the supreme court as provided in section 82-2004. The department shall supervise and attend to all public printing of the state as provided in this chapter, and shall prevent duplication and unnecessary printing. All forms, blanks, and documents printed for distribution to the state agencies and institutions shall be serially numbered and indexed by the department and sample copies of each permanently retained; and the department shall from time to time furnish to the public general information as to the nature, description, and official numbers of such reports as are available for public distribution.

(2) Unless otherwise provided by law, the department, in letting contracts as provided in this chapter, for the printing, binding, and publishing of all laws, journals, and reports of the state agencies and institutions may determine the quantity, quality, style, and grade of all such printing, binding, and publishing.

82-1916.1 STATE OFFICERS, BOARDS AND DEPARTMENTS

History: En. Sec. 6, Ch. 66, L. 1923; amd. Sec. 7, Ch. 80, L. 1961; amd. Sec. 9, Ch. 261, L. 1967; amd. Sec. 43, Ch. 93, L. 1969; amd. Sec. 71, Ch. 326, L. 1974.

Compiler's Notes

Section 82-2004, referred to in the first paragraph of this section, was repealed by Sec. 2, Ch. 305, Laws 1967. For present law dealing with the style and publication of supreme court reports, see sec. 82-2002.

Amendments

The 1967 amendment, in the subparagraph beginning "To the librarian," substituted "two (2) copies of each report" for "forty (40) copies of printed reports and a minimum of four (4) copies of mimeographed or carbon reports"; and deleted the following two paragraphs which read, "The historical society of Montana shall distribute publications so received to the public libraries, and other educational, scientific, library or art institutions of the state, which may apply to be put on the mailing list for all or a portion of the state publications; and to such libraries and other institutions outside this state with which the historical society of Montana may have established

exchange relations" and "The historical society of Montana shall transmit to the United States Library of Congress, two (2) copies of every administrative report or study"; and added the last subparagraph.

The 1969 amendment deleted the final three paragraphs concerning the governor's certification of reports for publication and the printing and distribution of such reports.

The 1974 amendment substituted "department" for "state purchasing agent" throughout the section; substituted "this chapter" for "this act" in two places; and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 44 of Ch. 93, Laws 1969 read "Sections 40-2712, 41-1607, 41-1608, 46-106, 46-242, 66-2106, 72-138, 75-1309, 75-1310, 81-206, 81-1702.4, 82-804.3, 82-2704, 82-3506, and 82-3708, R. C. M. 1947, are repealed."

Cross-References

Printing defined, sec. 19-103.1.

State publications distribution center, secs. 44-132 to 44-139.

82-1916.1. Supervision of public printing. The department may not approve a claim for printing submitted by a state officer, agency, or institution unless:

(1) A purchase order has been prepared and approved by the department prior to ordering the printing; or

(2) Written approval has been given by the department to order the printing without preparation of a purchase order.

History: En. Sec. 10, Ch. 197, L. 1921; re-en. Sec. 293, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1969; Sec. 82-1910, R. C. M. 1947; amd. and redes. 82-1916.1 by Sec. 65, Ch. 326, L. 1974.

Amendments

The 1974 amendment renumbered this

section; deleted a first paragraph relating to the state purchasing agent's supervision of public printing (see parent volume); substituted "department" for "state controller" in the first sentence and for "state purchasing agent" in subdivision (2); and made minor changes in phraseology, punctuation and style.

82-1917. (293.7) Requisitions for supplies—manner of letting contracts. (1) State officers, agencies and institutions shall tabulate in detail the amount of supplies on hand for any class of merchandise for a period as determined by the department, and the additional supplies needed for a period of time not to exceed one year's supply. The department shall make examination of the amount of supplies on hand and shall determine from that examination and from the furnished statements, the additional amount of supplies necessary and shall make an itemized statement thereof, all of which acts of the department are subject to approval of the governor. As soon as the department determines what kind of supplies and the amount necessary for the state to purchase for its state offices, agencies, or institutions, the department shall make the purchases.

(2) All purchases by the department shall be based on competitive bids. On any purchase where the estimated expenditure is two thousand dollars (\$2,000) or over, sealed bids shall be solicited by mail from each person, firm, or corporation who has filed with the department a request in writing that it be listed for solicitation on bids for such particular items set forth in such listing. However, if a person, firm, or corporation whose name is listed fails to respond to any solicitation for bids, after the receipt of two such solicitations, such listing shall, within the discretion of the department, be canceled. It is within the discretion of the department to advertise for such purchases. If bids are solicited through advertising, the advertisement shall be made in at least three newspapers, one of which must be a daily, of general circulation printed within the state, once each week for two (2) consecutive weeks, and the advertisement shall state that sealed proposals will be received by the department, up to a time to be mentioned therein, for furnishing supplies for the state offices, agencies, or institutions. The notice shall also state that detailed statements of supplies to be furnished are on file at the office of the department and subject to inspection, and that at a certain time, to be therein mentioned, the proposals will be opened, and contracts awarded to the lowest responsible bidder.

(3) On purchases where the estimated expenditure is less than two thousand dollars (\$2,000), bids shall be secured without advertising, but the department shall solicit bids for the supplies by notice sent by mail to prospective suppliers whose names are listed as provided above, which notice shall contain the same information as is herein required to be set forth in advertisements.

(4) In the case of all bids as herein provided, there shall be separate proposals and separate contracts. Each proposal may be accompanied by sample supplies proposed to be furnished. The proposals shall be in writing, sealed, and marked, "proposals for furnishing supplies," and shall be addressed to the department of administration, Helena, Montana.

(5) At the time set for the opening of bids, the proposals shall be opened in public, and contracts awarded to the lowest responsible bidder. The department may reject any and all bids. If all proposals be rejected, proposals shall again be invited and proceeded with in the same manner; however, in that event, the department may, with the approval of the governor, purchase the supplies on the open market if they can be so purchased at a better price.

(6) With any proposal the department may require a certified check on some responsible bank, payable to the treasurer of the state, equal in amount to five per cent (5%) of the sum of the proposal, as a guarantee for the faithful performance of any contract awarded. After the award is made, all checks deposited as a guarantee shall be returned, except that of the successful bidder whose check shall be held until the contract is signed and the bond filed and approved, if a bond is required. All proposals shall include the delivery of the supplies to the agencies and institutions for which they are purchased.

(7) The state officers, agencies, or institutions, may not purchase any supplies or material, except on approval of the department.

History: En. Sec. 7, Ch. 66, L. 1923; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974.

Amendments

The 1971 amendment reduced the number of solicitations required by the first proviso to the second sentence of the second paragraph from three to two; substituted "one of which must be a daily" in the last sentence of the second paragraph for a requirement that all three be dailies; reduced the advertising requirement specified in the last sentence of the second paragraph from three to two weeks; deleted "the first publication to be

not less than twenty-two (22) days before the date set for the opening of bids" after "consecutive weeks" in the last sentence of the second paragraph; substituted "may" for "shall" in the second sentence of the fourth paragraph; deleted "ample in quantity * * * intended delivery" from the end of the second sentence of the fourth paragraph; and made minor changes in style.

The 1974 amendment substituted "department" or "department of administration" for "state purchasing agent" throughout the section; and made minor changes in phraseology, punctuation and style.

82-1918. (293.8) Contracts limited to three years—building laws. (1)

No contract, except as otherwise provided by law, shall be made for a longer period than three (3) years and a contract shall provide for the delivery of the articles at the times and in the quantities as the department determines.

(2) All buildings built or leased or purchased under this act must comply with all laws, safety codes, rules and regulations of the state of Montana.

History: En. Sec. 8, Ch. 66, L. 1923; amd. Sec. 2, Ch. 301, L. 1971; amd. Sec. 1, Ch. 496, L. 1973; amd. Sec. 9, Ch. 242, L. 1974; amd. Sec. 73, Ch. 326, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 242 and once by Ch. 326. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment increased the maximum contract period from one year to three years.

The 1973 amendment designated the language in the former section as subsection (1); inserted "except those provided in

subsection (2) of this section" in subsection (1); and added subsections (2) and (3).

Chapter 242, Laws of 1974, substituted "except as otherwise provided by law" for "except those provided for in subsection (2) of this section" in subsection (1); deleted subsection (2) added in 1973 authorizing the purchasing agent to enter into rental contracts with an option to purchase; and designated former subsection (3) as (2).

Chapter 326, Laws of 1974, substituted "department" for "purchasing agent" in subsection (1) and made minor changes in phraseology.

Effective Date

Section 10 of Ch. 242, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

82-1919. (293.9) Purchase of fresh fruits and vegetables—emergency purchases. (1) Fresh fruits and vegetables (other than potatoes) shall not be included in the supplies to be purchased as provided in this chapter. The department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized account shall be kept of these purchases and the account shall be furnished to the department.

(2) Likewise, when immediate delivery of articles or performance of service is required by the public exigencies, the articles or service so required may be procured by open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals, but under the direction of the department.

History: En. Sec. 9, Ch. 66, L. 1923; amd. Sec. 8, Ch. 80, L. 1961; amd. Sec. 74, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "state purchasing agent" throughout the section; and made minor changes in phraseology, punctuation and style.

82-1920. (293.10) Impartiality to be shown in letting contracts—preference to residents. The department may not show any partiality or favoritism in making awards or contracts, and shall be absolutely fair and impartial. Where both the bids and quality of goods offered are the same, preference shall be given to articles of local and domestic production and manufacture, and where both the bids and the quality of goods offered are the same, preference shall be given to resident bidders of the state over nonresident bidders.

History: En. Sec. 10, Ch. 66, L. 1923; amd. Sec. 75, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state purchasing agent"; and made minor changes in phraseology.

82-1921. (293.11) Record of bids—contracts. The department shall record in a book kept for that purpose, a true abstract of all bids made for furnishing supplies and equipment for the state, giving the name of the party bidding, the terms of the offer, the sum to be paid, and shall keep on file and preserve all bids until the end of the contract term to which they relate. Each bidder has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids. All purchases, advertisements, and contracts for supplies for any purpose authorized by law shall be made by the department in the name of the state. The records shall be open at all times for the inspection of those who are interested in the contracts made or to be made with the state.

History: En. Sec. 11, Ch. 66, L. 1923; amd. Sec. 76, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state purchasing agent" and made minor changes in phraseology.

82-1922. (293.12) Transfer of contract forbidden—agreement between bidders invalidates contracts—interest in contracts by state officers forbidden—penalty. (1) No contract or order or any interest therein may be transferred by the party to whom the contract or order is given to any other party, and the state may declare void any such transfer. Collusion or secret agreements between bidders for the purpose of securing any advantage to the bidders as against the state in the awarding of contracts is prohibited, and the state may declare the contract void if the department finds sufficient evidence after a contract has been let that the contract was obtained by a bidder or bidders, by reason of collusive or secret agreement among the bidders to the disadvantage of the state.

(2) All rights of action, however, for a breach of a contract by the contracting parties are reserved to the state. A person who violates the provisions of this act is guilty of a misdemeanor and shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,-

000) and the state of Montana shall have the right at its option to declare any contract in violation of the provisions of this act void ab initio.

History: En. Sec. 12, Ch. 66, L. 1923; amd. Sec. 2, Ch. 43, L. 1973; amd. Sec. 77, Ch. 326, L. 1974.

Amendments

The 1973 amendment deleted from the second paragraph clauses reading "No member of the legislature, nor any elective or appointive state officer, nor any deputy or employee thereof, nor superintendent of any state institution or any employee thereof, nor any person in the employ of the state of Montana in any capacity whatsoever, shall directly, himself, or by another person in trust for him or for his use or benefit or on his account, undertake, execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into by or on behalf of the state of Montana under the provisions of this act"; increased the minimum fine from \$100 to \$500; added to the end of the section the clause giving the state the option to void

contracts in violation; and made minor changes in style.

The 1974 amendment substituted "the state may declare the contract void if the department finds sufficient evidence" in the second sentence of subsection (2) for "the state purchasing agent and the state board of examiners shall have the right to declare any contract null and void if they shall find sufficient evidence"; and made minor changes in phraseology and style.

Repealing Clause

Section 3 of Ch. 43, Laws 1973 read "Section 82-1144, R. C. M. 1947, is hereby repealed."

Effective Date

Section 4 of Ch. 43, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved February 10, 1973.

82-1923. (293.13) Inspection of property and warehouses of state. The warehouses, supplies, furnishings, and property of all kinds used in and about the business of the state is subject at all times to the inspection of the department and any officer or employee of any agency.

History: En. Sec. 13, Ch. 66, L. 1923; amd. Sec. 78, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "state purchasing department"; and made minor changes in phraseology.

82-1924. State contracts to be awarded to lowest responsible resident bidder. In order to provide for an orderly administration of the business of the state of Montana in awarding contracts for materials, supplies, equipment, construction, repair and public works of all kinds, it shall be the duty of each board, commission, officer or individual charged by law with the responsibility for the execution of the contract on behalf of the state, board, commission, political subdivision, agency, school district or a public corporation of the state of Montana, to award such contract to the lowest responsible bidder who is a resident of the state of Montana and whose bid is not more than three per cent (3%) higher than that of the lowest responsible bidder who is a nonresident of this state. In awarding contracts for purchase of products, materials, supplies or equipment such board, commission, officer or individual shall award the contract to any such resident whose offered materials, supplies or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than three per cent (3%) higher than that of the lowest responsible resident bidder whose offered materials, supplies or equipment are not so manufactured or produced, provided that such products, materials, supplies and equipment are comparable in quality and performance. This requirement shall prevail whether the law requires

advertisement for bids or does not require advertisement for bids and it shall apply to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto.

History: En. Sec. 1, Ch. 183, L. 1961; amd. Sec. 1, Ch. 197, L. 1969.

Amendments

The 1969 amendment substituted "three per cent (3%)" for "two per cent (2%)" before "higher" in the first sentence; inserted the second sentence; substituted "requires" for "required" before "advertisement for bids" in the present third sentence and added "and it shall apply to * * * adopted pursuant thereto" at the end.

Janitorial and Maintenance Services

Although this section provides 2% preference for resident bidders, it also establishes a general policy of requiring competitive bidding, including contracts for janitorial services for capitol complex, and such contracts must be let by competitive bidding. State ex rel. Great Falls Mr. Klean v. Montana State Board of Examiners, 153 M 220, 456 P 2d 278.

82-1925. Residence defined—domestic corporations. For the purpose of this act the word "resident" shall include actual residence of an individual within this state for a period of more than one (1) year immediately prior to bidding; in a partnership enterprise or an association, the majority of all partners or association members shall have been actual residents of the state of Montana for more than one (1) year immediately prior to bidding; domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents but this qualification may be set aside and a successful bid disallowed where it is shown to the satisfaction of the board, commission, officer or individual charged with the responsibility for the execution of such contract that said corporation is a wholly owned subsidiary of a foreign corporation or that said corporation was formed for the purpose of circumventing the provisions of this act relating to residence. Notwithstanding the foregoing, any bidder on a contract for purchase of products, materials, supplies or equipment, whether an individual, partnership or corporation, foreign or domestic and regardless of ownership thereof, whose offered materials, supplies or equipment are manufactured or produced in this state by industry located in Montana and Montana labor shall be deemed to be a resident for the purpose of this act.

History: En. Sec. 2, Ch. 183, L. 1961; amd. Sec. 2, Ch. 197, L. 1969; amd. Sec. 1, Ch. 74, L. 1974.

Amendments

The 1969 amendment, in the latter portion of the first sentence, deleted "(a) composed of resident organizers or directors of this state who have no substantial interest or investment in the corporation for which they are acting and that the

ownership and control of said company is vested in nonresidents"; deleted item designations (b) and (c); added the second sentence; and made minor changes in style.

The 1974 amendment inserted "bidder on a contract for purchase of products, materials, supplies or equipment, whether an" before "individual" near the end of the section.

82-1925.1. State department of revenue to determine residency of contractor—endorsement upon license—applications for redetermination of residency—furnishing lists—department's determination as prima facie evidence. It shall be the duty of the state department of revenue of the state of Montana, at the time that a public contractor makes application for a license under the provisions of chapter 35, Title 84 of this code, to

determine whether or not such contractor is a "resident" of the state of Montana within the meaning of sections 82-1924 and 82-1925. The department shall endorse upon the contractor's license whether or not such contractor is a "resident" as aforesaid. If a contractor is not a "resident" at the time such license is issued, but thereafter qualifies as such, he may apply to the department of revenue for a redetermination of his residency, and, if found to qualify as a "resident," the department shall endorse such fact upon his license, together with the date of such qualification. It shall be the duty of the state department of revenue, upon written request of any board, commission, officer or individual charged by law with the responsibility for the execution of any contract subject to the provisions of section 82-1924 on behalf of the state, board, commission, political subdivision, agency, school district or public corporation of the state of Montana, to furnish a list of contractors who have qualified as "residents," as aforesaid, to such requesting body. The determination of the department of revenue that a public contractor is or is not a "resident" within the meaning of sections 82-1924 and 82-1925 shall be prima facie evidence of such fact.

History: En. Sec. 1, Ch. 217, L. 1967; amd. Sec. 61, Ch. 391, L. 1973.

Title of Act

An act providing for the determination by the board of equalization of the state of Montana of whether a bidder on public contracts is a "resident" within the meaning of sections 82-1924 and 82-1925, Revised Codes of Montana, 1947.

Amendments

The 1973 amendment substituted "department" and "department of revenue" for "board" and "board of equalization" throughout the section.

Separability Clause

Section 2 of Ch. 217, Laws 1967 read "If any part of this act shall be held to be unconstitutional or invalid by a court of competent jurisdiction, it is the intent of the legislative assembly that all valid parts that are severable from the invalid part remain in effect."

Challenge of Issuance of Certificate

Resident contractor had standing to challenge, by original application for writ of mandate, validity of residency certificate issued by department of revenue to nonresident contractor; since resident was not party to nor given notice of administrative proceedings awarding certificate of residency, it had no administrative remedies to exhaust. *State ex rel. Sletten Constr. Co. v. City of Great Falls*, — M —, 516 P 2d 1149.

Insufficient Affidavit

Foreign corporation which stated that it would use Montana products and materials "insofar as they are available" and that it would use Montana labor "except for selected supervisory personnel" did not qualify for certification as resident contractor. *State ex rel. Sletten Constr. Co. v. City of Great Falls*, — M —, 516 P 2d 1149.

82-1926. Contract provision for preference to Montana products—failure to comply—federal-aid projects. Each contract awarded by any political subdivision, school district, public corporation or agency of the state of Montana shall contain among its provisions a requirement that in all instances products manufactured or produced in this state by Montana industry and labor shall be preferred for use in all projects and in all materials, supplies and equipment, if such products, materials, equipment and supplies are comparable in price and quality. Further, in this connection, it is the intent of this act that wherever possible products manufactured and produced in this state which are suitable substitutes for products manufactured or produced outside the state and comparable in

price, quality and performance, shall be preferred for use in all projects and in all state institutions.

Failure to comply with the law in this respect shall disqualify such contractor as a qualified bidder for future contracts with the state of Montana, any legal subdivision of the state of Montana, any school district, public corporation or agency for a period of two (2) years.

The preference herein given to Montana products shall apply to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto.

History: En. Sec. 3, Ch. 183, L. 1961; amd. Sec. 3, Ch. 197, L. 1969.

Amendments

The 1969 amendment rewrote the final paragraph which formerly provided that

no preference should be given on contracts where federal aid had been obtained except as provided for by federal laws and that section 82-1157 was not amended or repealed by the act enacting 82-1926.

82-1927. Restriction on submitting additional bids when working beyond contract time. A public contractor, as defined in section 84-3501, R.C.M. 1947, who has been awarded a contract by the state of Montana, or any board, commission or department thereof, or by any board of county commissioners, or by any city or town council, or agency thereof, for the construction or reconstruction of a public work, and is working beyond the contract time (including any authorized time extensions) shall not submit any additional bids or proposals, nor enter into any additional contract with any public agency of the state of Montana, county, or city thereof, until he has completely executed the contract upon which he is working beyond contract time, and all supplemental agreements thereto.

History: En. Sec. 1, Ch. 141, L. 1967.

Title of Act

An act to provide that a public contractor who is working over the contract time on a previously awarded contract from the state of Montana, or any board, commission or department thereof, or from any

board of county commissioners, or from any city or town council, or agency thereof, may not submit any additional bids or proposals to any of the above-mentioned agencies until he has completely executed the present contract upon which he is working beyond contract time; amending section 84-3507, R. C. M. 1947.

82-1928. Excusable delays not considered working beyond contract time. A public contractor shall not be considered to be working beyond contract time if the delay is caused by an accident or casualty produced by physical cause which is not preventable by human foresight, i.e., any of the misadventures termed an "Act of God."

History: En. Sec. 2, Ch. 141, L. 1967.

82-1929. Short title. This act shall be known and may be cited as the "Montana Small Business Purchasing Act."

History: En. 82-1929 by Sec. 1, Ch. 204, L. 1974.

Title of Act

An act known as the "Montana Small

Business Purchasing Act" authorizing state agencies to set aside specified commodities, equipment or services for bidding by small businesses.

82-1930. Statement of purpose and policy. It is the purpose of this act and is hereby declared to be the policy of this state that, whereas the existence of a strong and healthy free enterprise system is directly related to the well-being and competitive strength of small business concerns, and to the opportunity for small businesses to have free entry into business, to grow and to expand, the state shall ensure that a fair proportion of its total purchases and contracts for property and services be placed with small business concerns.

History: En. 82-1930 by Sec. 2, Ch. 204,
L. 1974.

82-1931. Definitions. As used in this act, unless the context requires otherwise:

(1) "Department" means any department, division or agency of the state of Montana.

(2) "Small business" means a business which is independently owned and operated, and which is not dominant in its field of operation. The department of administration shall establish a detailed definition by rule, using in addition to the foregoing criteria, other criteria. Small business shall further mean all business domiciled in the state of Montana or one that employs more than fifty per cent (50%) of its total employed personnel within the boundaries of the state of Montana.

(3) "Small business set-aside" means a purchase request for which bids are to be invited and accepted only from small businesses by a department.

History: En. 82-1931 by Sec. 3, Ch. 204,
L. 1974.

82-1932. Small business set-asides—designation. Each department has authority to designate as small business set-asides specified commodities, equipment, or services except those services rendered and furnished by registered professions such as, but not limited to, accountants, attorneys, architects, dentists, engineers, land surveyors, optometrists, physicians, pharmacists for which purchase has been requested under the Montana Small Business Purchasing Act. Such a designation shall be made prior to the advertisement for bids in a daily state newspaper, and when the advertisement is published it shall indicate the purchases which have been designated small business set-asides. To effectuate the purposes of this act, a department shall exercise this authority whenever there is a reasonable expectation that bids will be obtained from at least three (3) small businesses capable of furnishing the desired property or service at a fair and reasonable price.

In the case of purchase designated as small business set-asides, invitations to bid shall be confined to small businesses and bids from other businesses shall be rejected. The purpose, contract or expenditure of funds shall be awarded to the lowest responsible bidder among the small businesses (considering conformity with specifications and terms) in accordance with the rules and regulations for purchasing published by the department.

History: En. 82-1932 by Sec. 4, Ch. 204,
L. 1974.

82-1933. Insufficient bids—withdrawal of set-asides. If the total number of small businesses responding to the invitation to bid and considered capable of meeting the specifications and terms of the invitation to bid is less than three (3), or if a department determines that acceptance of the best bid will result in the payment of an unreasonable price, the department shall reject all bids and withdraw the designation of small business set-aside.

If a department withdraws the designation of small business set-aside it shall notify the bidders of the reason why the bids were rejected. Invitations to bid containing the same or rewritten specifications and terms shall then be re-issued under the Montana Small Business Purchasing Act, without the designation of small business set-aside.

History: En. 82-1933 by Sec. 5, Ch. 204,
L. 1974.

82-1934. Advertisement of successful bidder. After the successful bidder has been determined, the department shall place an advertisement in a daily newspaper indicating that all bids submitted on a small business set-aside have been opened and reporting the name and address of the successful bidder. A department shall send a purchase order to the successful bidder no later than fourteen (14) days after the appearance of the advertisement announcing the successful bidder.

History: En. 82-1934 by Sec. 6, Ch. 204,
L. 1974.

82-1935. Preference to Montana small business. When the best bid is made by a domestic Montana small business and it is the same as another bid, preference shall be given to such Montana concern.

History: En. 82-1935 by Sec. 7, Ch. 204,
L. 1974.

82-1936. Construction with other sections. Procurement from small businesses under this act is subject to all other statutes governing state procurement and all rules promulgated thereunder, as now or hereafter amended, except that in case of conflict this act governs and the provisions set forth in 82-1924, 82-1926 and 82-1920, shall not apply.

History: En. 82-1936 by Sec. 8, Ch. 204,
L. 1974.

82-1937. Severability. If any section in this act or any part of any section is declared invalid or unconstitutional such declaration of invalidity shall not affect the validity of the remaining portions thereof.

History: En. 82-1937 by Sec. 9, Ch. 204,
L. 1974.

82-1938. Policy. It is the policy of the state of Montana to encourage state agencies to negotiate contracts with sheltered workshops and work activity centers principally engaged in rehabilitation programs that are located in Montana.

History: En. 82-1938 by Sec. 1, Ch. 123,
L. 1974.

contract with rehabilitation oriented
agencies without competitive bidding in
certain instances.

Title of Act

An act permitting state agencies to

82-1939. Definition. For the purpose of this act, a "sheltered workshop" and a "work activity center" mean a workshop having a sheltered workshop certificate, or an evaluation and training certificate, or a work activities center certificate issued by the wage and hour division of the United States department of labor, or recognized by the department of social and rehabilitation services in Montana.

History: En. 82-1939 by Sec. 2, Ch. 123,
L. 1974.

82-1940. Contracts negotiable without competitive bidding under certain circumstances. State agencies may negotiate contracts for the purchase of products not exceeding five thousand dollars (\$5,000) from sheltered workshops and work activity centers located in Montana without complying with the provisions of Title 82, chapter 19, concerning competitive bidding.

History: En. 82-1940 by Sec. 3, Ch. 123,
L. 1974.

CHAPTER 20—REPORTERS OF DECISIONS OF SUPREME COURT— PUBLICATION AND DISTRIBUTION OF REPORTS

Section

82-2002. Duties of reporters.

82-2002. (379) Duties of reporters. The reporters of the decisions of the supreme court shall make careful and accurate reports of the cases decided by the supreme court. The reports of the cases shall be made under the supervision of, and pursuant to rules adopted by the justices of the supreme court. Reports of all cases shall be furnished to the West Publishing Company for inclusion in their publication, the Pacific Reporter, and to any other private printing or duplicating concern requesting the reports for publication. The department of administration, on request of the supreme court, shall contract with a publishing house to publish volumes of reports. The style, size, and format of the reports shall be determined by the justices, and the department of administration shall prepare and issue a call for bids and in accordance with the terms and specifications of the call, contract with the lowest and best bidder.

History: En. Sec. 891, Pol. C. 1895; re-en. Sec. 307, Rev. C. 1907; re-en. Sec. 379, R. C. M. 1921; amd. Sec. 1, Ch. 174, L. 1947; amd. Sec. 1, Ch. 14, L. 1961; amd. Sec. 1, Ch. 305, L. 1967; amd. Sec. 79, Ch. 326, L. 1974.

The 1974 amendment substituted "department of administration" for "board of examiners" and "board" in the fourth and fifth sentences; and made minor changes in phraseology.

Repealing Clause

Section 2 of Ch. 305, Laws 1967 read "Sections 82-2003, 82-2004, 82-2005 and 82-2006, Revised Codes of Montana, 1947, are hereby repealed."

Amendments

The 1967 amendment added the last two sentences.

82-2003 to 82-2006. (380 to 383) Repealed.

Repeal

These sections (Secs. 892 to 895, Pol. C. 1895; Secs. 1 to 3, Ch. 1, L. 1925; Sec. 1, Ch. 111, L. 1943; Sec. 1, Ch. 139, L. 1947;

Sec. 2, Ch. 14, L. 1961), relating to the style and title of supreme court reports, were repealed by Sec. 2, Ch. 305, Laws 1967.

CHAPTER 22—SECRETARY OF STATE

Section

- 82-2202. Duties of secretary of state.
 82-2203. [Transferred.]
 82-2208. Exceptions to application of law.
 82-2210 to 82-2212. [Transferred.]

82-2202. (134) Duties of secretary of state. In addition to the duties prescribed by the constitution, it is the duty of the secretary of state:

1 to 8. * * * [Same as parent volume.]

9. To notify in writing, the county attorney of the proper county of the failure of any officer in his county to file in his office the sworn statement of fees received by such officer.

10. To present to the legislative assembly, at the commencement of each session thereof, a full account of all purchases made and expenses incurred in furnishing fuel, lights and stationery.

11. To keep a fee book, in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein.

12. To file in his office descriptions of seals in use by the different state officers, and furnish such officers with new seals whenever required.

13. To discharge the duties of member of the state board of examiners, of member of the state board of prison commissioners, of member of the state board of land commissioners and all other duties required of him by law.

14. To report to the governor, at the time prescribed in section 59-702 a detailed account of all official actions since his previous reports, and accompanying the report with a detailed statement, under oath, of the manner in which all appropriations for his office have been expended; and to report as provided in section 59-705.

15. To receive, designate, and record trade-marks as provided in section 85-102.

16. He must distribute the bound volumes of the decisions of the supreme court, in the manner provided by section 82-2007.

17. To report annually to the legislative services division of the legislative council all changes of names received pursuant to section 93-100-5, for publication in the session laws.

18. To report annually to the legislative services division of the legislative council all watercourse name changes received pursuant to section 93-100-9 for publication in the session laws.

History: En. Sec. 401, Pol. C. 1895; re-en. Sec. 154, Rev. C. 1907; re-en. Sec. 134, R. C. M. 1921; amd. Sec. 95, Ch. 199, L. 1965; amd. Sec. 1, Ch. 96, L. 1973. Cal. Pol. C. Sec. 408.

Amendments

The 1973 amendment deleted former subdivision 9 relating to delivery to the printer of laws, resolutions and legislative journals; redesignated former subdivisions 10 to 17, inclusive, as subdivisions 9 to 16; and added new subdivisions 17 and 18.

82-2203. [Transferred.]

Compiler's Notes

Section 82-2203 was redesignated as section 43-711.2 by Sec. 4, Ch. 96, Laws 1973.

82-2204. (136) Repealed.**Repeal**

Section 82-2204 (Sec. 403, Pol. C. 1895), relating to books distributed by the sec-

retary of state, was repealed by Sec. 2, Ch. 59, Laws 1973; Sec. 8, Ch. 96, Laws 1973.

82-2208. (140) Exceptions to application of law. The provisions of this act shall not apply to the decisions of the supreme court, the contributions of the historical society, session laws or house and senate journals, nor to bills printed for the legislative assembly, or other printing for its use during its session, not appropriate to be put in pamphlet form.

History: En. Sec. 408, Pol. C. 1895; re-en. Sec. 161, Rev. C. 1907; re-en. Sec. 140, R. C. M. 1921; amd. Sec. 2, Ch. 96, L. 1973.

Amendments

The 1973 amendment inserted "session laws or house and senate journals."

82-2210 to 82-2212. [Transferred.]**Compiler's Notes**

Sections 82-2210 to 82-2212 were redesignated as sections 43-711.3 to 43-711.5 by

Secs. 5 to 7, Ch. 96, Laws 1973.

CHAPTER 23—STOCK COMMISSION AND STATE VETERINARY SURGEON**82-2301. (231) Repealed.****Repeal**

Section 82-2301 (Sec. 218, Rev. C. 1907), relating to powers and duties of the livestock commission, livestock sanitary board

and state veterinary surgeon, was repealed by Sec. 201, Ch. 310, Laws of 1974.

CHAPTER 27—CO-ORDINATOR OF INDIAN AFFAIRS**Section**

82-2701. Legislative policy.

82-2702. Office of state co-ordinator of Indian affairs created—appointment of co-ordinator—term—office.

82-2703. Duties of co-ordinator.

82-2705. Executive and legislative agencies to assist in coal development.

82-2701. Legislative policy. Whereas, a considerable portion of the citizens of the state of Montana are members of the Indian race, and,

Whereas, in the course of the past eighty years these Indian citizens of the state of Montana have been driven from their native valleys and plains and are at present living and residing upon reservations set apart for such purposes by the United States of America, and by virtue of that isolation and of supervision by the federal government, great problems of economic and social significance have arisen and presently exist, and that no suitable progress has been made to solve such problems by reason of the fact that the Indians and those who are attempting to aid them in the solution of their problems have never been able to present a co-ordinated and united effort in solving such problems, and

Whereas, it is hereby declared that it is the legislative policy of this state that the best interests of the Indians will be served by the fostering of a program which is designed to establish and place our Indian citizens in a position to take their rightful place in our society, and assume the rights,

duties and privileges of full citizenship and as Indians, it is therefore necessary that a state office of the co-ordinator of Indian affairs be established so that the problems of the Indians of Montana can be approached and reconciled from a state level in co-operation with the United States of America, and

Whereas, agencies of the federal government retain jurisdiction on Indian reservations in the state of Montana of the administration of economic, social, health, education and welfare programs for Indians, and

Whereas, Indians who reside off reservations generally qualify for participation in federal programs, but are often prohibited from voting on tribal affairs and for tribal officers, and

Whereas, there are sizeable numbers of off-reservation Indians residing in our state of both enrolled and unofficial tribal descent (landless) whose needs for environmental assistance are borne by state and local agencies, and that these needs are derived from problems shared by all Indians, whether they reside on reservations or not, and in consideration of their desire for official voice and representation in seeking solutions to their problems, and

Whereas, programs of the state of Montana should not duplicate those supported by agencies of the federal government as regards jurisdiction of Indian people, and since state responsibility is effected with off-reservation Indians, and since those Indians require assistance to co-ordinate their affairs with various tribal groups and federal agencies where they have no official recognition,

Then therefore, let it be resolved that the co-ordinator of Indian affairs should assess the problems of all Indians to include those who reside off known reservations, and who seek ways and means of communicating their opinions and needs to agencies of responsibility, and that the co-ordinator should actively assist them in organizing their efforts and that he act as representative and spokesman for organized bodies of Indian people whether reservation or off-reservation classification, whenever his assistance is required.

History: En. Sec. 1, Ch. 203, L. 1951; amd. Sec. 1, Ch. 319, L. 1969; amd. Sec. 1, Ch. 160, L. 1974.

Amendments

The 1969 amendment made a minor style

change at the end of the third paragraph and added the last five paragraphs.

The 1974 amendment inserted "and as Indians" after "privileges of full citizenship" in the third paragraph; and made minor changes in phraseology.

82-2702. Office of state co-ordinator of Indian affairs created—appointment of co-ordinator—term—office. The office of the state co-ordinator of Indian affairs is hereby created. The co-ordinator shall be appointed by the governor from a list of five (5) qualified Indian applicants agreed upon by the tribal councils of the respective Indian tribes of the state and shall serve at the pleasure of the governor.

History: En. Sec. 2, Ch. 203, L. 1951; amd. Sec. 12, Ch. 237, L. 1967; amd. Sec. 2, Ch. 319, L. 1969; amd. Sec. 2, Ch. 160, L. 1974.

Amendments

The 1967 amendment substituted "salary in such amount * * * and private industry" for "salary of one dollar (\$1.00) per year."

The 1969 amendment deleted a former fifth sentence, which read "Before approving any salary increase the board of examiners shall review the salaries of comparable positions in Montana state government, other states and private industry."

The 1974 amendment substituted "Indian applicants" for "persons" in the second sentence; substituted "and shall serve at the pleasure of the governor" for "He shall hold such office for a term of four (4) years and shall be paid a

salary in such amount as may be specified by the legislative assembly in the appropriation to the co-ordinator of Indian affairs. If the legislative assembly does not specify the maximum salary for the co-ordinator, any increase in the salary of the co-ordinator must be approved by the board of examiners. He shall maintain his office at the state capitol in Helena, Montana"; and made minor changes in phraseology.

82-2703. Duties of co-ordinator. It shall be the duty of the state co-ordinator of Indian affairs to carry out the legislative policy set forth in section 82-2701.

He shall acquaint himself with the problems confronting the Indians of Montana and he shall advise the legislative and executive branches of the state of Montana of those problems and shall make recommendations for the alleviation thereof. He shall also serve the Montana delegation in the federal Congress as an adviser and intermediary in the field of Indian affairs, and shall act as spokesman for representative Indian organizations and groups, public and private, whenever his support is solicited.

History: En. Sec. 3, Ch. 203, L. 1951; amd. Sec. 3, Ch. 319, L. 1969; amd. Sec. 3, Ch. 160, L. 1974.

Amendments

The 1969 amendment, in the second sentence of the first paragraph, inserted "educational funds, economic, health, and housing funds" after "rehabilitation loans" and substituted "various federal programs established for these purposes" for "Indian loan associations to be established on the various reservations" at the end of the third sentence; in the second paragraph, substituted "and sanitation * * * whenever necessary" for "on Indian reservations and in general to promote the welfare of our Indian citizens, and in doing these things he will co-ordinate"; and in the third paragraph, added "and shall act * * * whenever such support is solicited."

The 1974 amendment deleted from the end of the first paragraph two sentences which read "He shall solicit rehabilitation loans, educational funds, economic, health, and housing funds from various sources for the purpose of enabling deserving Indians to become self-sufficient. Interest rates on such loans shall not exceed four per cent (4%) and such loans shall be disbursed through various federal programs established for these purposes"; deleted a second paragraph which read "He shall also do everything possible to bring about adequate housing and sanitation for Indians, whether they reside on reservations or not, and will co-ordinate such activities whenever necessary with the department of Indian affairs of the United States, the United States government and the state of Montana"; and made minor changes in phraseology.

82-2704. Repealed.

Repeal

Section 82-2704 (Sec. 4, Ch. 203, L. 1951), relating to reports by the state co-

ordinator of Indian affairs, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

82-2705. Executive and legislative agencies to assist in coal development. All executive and legislative agencies of state government may within the area of their expertise and authority provide assistance to tribal councils or their official designees requesting such assistance on any matter relating to coal development on Indian reservation lands, and may make an appropriate charge therefor.

History: En. Sec. 1, Ch. 221, L. 1973.

Title of Act

An act allowing all agencies of state government to give assistance to tribal

councils or their official designees assistance on any matter relating to coal development on Indian lands, and providing for recovery of costs thereof.

CHAPTER 29—AGRICULTURE AND LIVESTOCK COUNCIL

(Repealed—Section 173, Chapter 218, Laws of 1974)

82-2901 to 82-2903. Repealed.

Repeal

Sections 82-2901 to 82-2903 (Secs. 1 to 3, Ch. 87, L. 1953), relating to the agri-

culture and livestock council, were repealed by Sec. 173, Ch. 218, Laws of 1974.

CHAPTER 30—NATURAL RESOURCES AND DEVELOPMENT COUNCIL

(Repealed—Section 108, Chapter 253, Laws of 1974)

82-3001 to 82-3003. Repealed.

Repeal

Sections 82-3001 to 82-3003 (Secs. 1 to 3, Ch. 95, L. 1953; Sec. 4, Ch. 280, L. 1965; Sec. 1, Ch. 230, L. 1967; Secs.

1 to 3, Ch. 269, L. 1969; Sec. 1, Ch. 85, L. 1971), relating to the interdepartmental advisory council, were repealed by Sec. 108, Ch. 253, Laws of 1974.

CHAPTER 31—STATE AGENCY FOR SURPLUS PROPERTY

82-3105. Superintendent of public instruction, etc.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

CHAPTER 32—STATE RECORDS

Section

82-3207. Declaration of public policy as to preservation of state records.

82-3208. State archives created—appointment of archivist—duties and compensation.

82-3209. Archivist to preserve noncurrent records of permanent value.

82-3207. Declaration of public policy as to preservation of state records.

The legislative assembly declares that it is the public policy of the state of Montana that noncurrent records of permanent value to the state should be preserved and protected; that the operations of state government should be made more efficient, more effective, and more economical through current records management; and that to the end that the people may receive maximum benefit from a knowledge of state affairs, the state should preserve its noncurrent records of permanent value for study and research.

History: En. Sec. 1, Ch. 108, L. 1969.

Title of Act

An act creating a state archives in the Montana historical society; providing for

appointment of a state archivist to preserve noncurrent records of permanent value to the state and to assist state officers and agencies in records management.

82-3208. State archives created—appointment of archivist—duties and compensation. There is a state archives in the Montana historical society

for the preservation of noncurrent records of permanent value to the state and for records management. The director of the Montana historical society shall appoint a state archivist who serves at the pleasure of the director, define his duties, and fix his compensation with the approval of the board of trustees of the Montana historical society.

History: En. Sec. 2, Ch. 108, L. 1969.

Cross-References

Director's functions continued, sec. 82A-504.

82-3209. Archivist to preserve noncurrent records of permanent value.

The state archivist shall preserve noncurrent records of permanent value. Upon request, he shall assist and advise in the establishment of records management programs in the executive, legislative, and judicial branches of state government with due regard to the functions of the officers and agencies involved.

History: En. Sec. 3, Ch. 108, L. 1969; am.d. Sec. 1, Ch. 41, L. 1973.

establish and administer an active, continuing program for the economical and efficient management of state records" from the end of the first sentence.

Amendments

The 1973 amendment deleted "and shall

CHAPTER 33—DEPARTMENT OF ADMINISTRATION—SUPERVISION OF FACILITIES—BUILDING PROGRAM—COMMUNICATIONS

Section

- 82-3306. Supervision of mailing, data processing, duplicating, copying, and automatic typing facilities.
- 82-3314. Definitions of building and construction.
- 82-3315. Preparation of building programs and submittal to the legislative assembly.
- 82-3315.1. Authority to enter into rental contract with option to purchase.
- 82-3315.2. Location of building.
- 82-3315.3. Security pledge.
- 82-3315.4. Appointment of architect.
- 82-3315.5. Contract provisions.
- 82-3315.6. Rent payments.
- 82-3315.7. Awarding contract.
- 82-3315.8. Compliance with state laws and regulations.
- 82-3316. Authority to construct buildings.
- 82-3317. Supervision of construction of buildings.
- 82-3318. General powers and duties of department of administration.
- 82-3319. Appointment of architects and consulting engineers.
- 82-3321. Pecuniary interest in construction of buildings prohibited.
- 82-3325. Powers and duties of department of administration regarding communications.
- 82-3329. Bases of director's decisions.
- 82-3330. Co-operation with other government agencies not limited.
- 82-3331. Exemption of law enforcement communications system—exception.

82-3301 to 82-3305. Repealed.

Repeal

Sections 82-3301 to 82-3305 (Secs. 1 to 5, Ch. 271, L. 1963; Sec. 2, Ch. 101, L. 1969; Sec. 1, Ch. 313, L. 1971), relating

to the department of administration, the controller, and divisions of the department, were repealed by Sec. 103, Ch. 326, Laws of 1974.

82-3306. Supervision of mailing, data processing, duplicating, copying, and automatic typing facilities. (1) The department of administration shall maintain and supervise any central mailing, messenger service, data processing, duplicating, and copying facilities for state agencies in the cap-

itol area. Cost records shall be maintained and agencies shall be billed for services received.

History: En. Sec. 6, Ch. 271, L. 1963; amd. Sec. 1, Ch. 298, L. 1967; amd. Sec. 3, Ch. 101, L. 1969; amd. Sec. 2, Ch. 313, L. 1971; amd. Sec. 80, Ch. 326, L. 1974.

Amendments

The 1967 amendment numbered the original paragraph of the section "(1)"; and added subsection (2).

The 1969 amendment deleted "the budget director" after "committee consisting of" and substituted "two" for "three" after "members appointed by the other" in the second sentence of subsection (2).

The 1971 amendment inserted "data processing, duplicating and copying" in the first sentence of subsection (1); added the second sentence to subsection (1); inserted "and utilization" and "programs and data processing communication networks" in the first sentence of subsection (2); and deleted "other than the department of public instruction" from the end of the last sentence of subsection (2).

The 1974 amendment substituted "department of administration" in the first

sentence for "controller"; inserted "messenger service" in the first sentence; and deleted a second subsection which read: "(2) The controller shall establish regulations governing the procurement and utilization of data processing equipment, programs and data processing communication networks, duplicating and copying equipment, and equipment generally prescribed for automatic typing. The regulations of the state controller shall be formulated with the advice of a committee consisting of a representative of the board of regents, a representative of the state highway commission, and two (2) members appointed by the other two, and one (1) of the appointed members shall have special knowledge or experience with data processing equipment and one (1) shall have special knowledge or experience with the other named office equipment. Within these regulations the controller shall supervise the procurement and location of the herein named equipment for all state agencies."

82-3307, 82-3308.

Compiler's Notes

Section 98, Ch. 326, Laws 1974, substituted "department of administration"

in these sections for "state controller" and "controller."

82-3309. Custodial care of capitol buildings and grounds.

Compiler's Notes

Section 98, Ch. 326, Laws 1974, substituted "department of administration" in this section for "state controller" and "controller."

Competitive Bidding

Contract to provide janitorial services, maintenance service and supplies for capitol complex required competitive bidding. State ex rel. Great Falls Mr. Klean v. Montana State Board of Examiners, 153 M 220, 456 P 2d 278.

82-3314. Definitions of building and construction. In sections 82-3315 to 82-3321, with the exception of 82-3317(2),

(1) "Building" includes:

(a) A building, facility, or structure constructed or purchased wholly or in part with state moneys.

(b) A building, facility, or structure at a state institution.

(c) A building, facility, or structure owned or to be owned by a state agency, including the department of highways.

(2) "Building" does not include:

(a) A building, facility, or structure owned or to be owned by a county, city, town, school district, or special improvement district.

(b) A facility or structure used as a component part of a highway or water conservation project.

(3) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.

History: En. Sec. 14, Ch. 271, L. 1963; amd. Sec. 1, Ch. 24, L. 1973; amd. Sec. 81, Ch. 326, L. 1974.

Amendments

The 1973 amendment added "with the

exception of 82-3317 (2)," to the preliminary clause.

The 1974 amendment substituted "department of highways" in subdivision (1) (c) for "state highway commission"; and made minor changes in punctuation.

82-3315. Preparation of building programs and submittal to the legislative assembly. (1) Before July 1 of each even-numbered year, each state agency and institution shall submit to the department of administration, on forms furnished by the department, a proposed long range building program, if any, for the agency or institution. Each agency and institution shall furnish any additional information requested by the department relating to the utilization of, or need for buildings.

(2) The department shall examine the information furnished by each agency and institution and shall gather whatever additional information is necessary, and conduct whatever surveys are necessary, in order to provide a factual basis for determining the need for, and the feasibility of the construction of buildings. The information compiled by the department shall be submitted to the governor before December 1 of each even-numbered year.

(3) During the first week of each regular legislative session, the governor shall submit to the legislative assembly:

(a) The requests of all state agencies and institutions compiled in the form of a comprehensive, long range proposed building program, including:

(i) The purpose for which each building would be used.

(ii) The estimated cost of each building, including necessary land acquisition.

(iii) The reasons given by the institution or agency for needing each building.

(iv) A priority order recommended by the agency or institution for each building.

(v) The recommendation of the institution or agency as to when each building is needed.

(vi) Any comments of the governor.

(b) A building program proposed by the governor for the forthcoming biennium in the form of a capital construction budget, including:

(i) The purpose for which each building would be used.

(ii) The estimated cost of each building and necessary land acquisition.

(iii) The reasons for the governor's recommendation to construct each building during the forthcoming biennium.

(iv) The proposed method of financing for each building.

(v) Any long range building plans.

(vi) Any changes in the law necessary to ensure an effective, well coordinated building program for the state.

History: En. Sec. 15, Ch. 271, L. 1963; amd. Sec. 82, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted references to "department of administration" for "controller" throughout this section.

82-3315.1. Authority to enter into rental contract with option to purchase. When authorized by a vote of two-thirds ($\frac{2}{3}$) of the members of each house of the legislature, the department of administration shall have the authority, as part of the long range building program, to enter into a rental contract which provides an option to purchase a building to be used by the state or any department of state government.

History: En. 82-3315.1 by Sec. 1, Ch. 242, L. 1974.

administration to enter into rental contracts with option to purchase for buildings to be used by the state; amending section 82-1918, R. C. M. 1947, and providing an effective date.

Title of Act

An act authorizing the department of

82-3315.2. Location of building. The building shall be located as determined by the terms of the call for bids. If any such contract requires the sale or lease of any interest in state lands, the contract must have prior approval of the state board of land commissioners.

History: En. 82-3315.2 by Sec. 2, Ch. 242, L. 1974.

82-3315.3. Security pledge. To ensure an adequate security provision for the lessor, the full faith and credit and taxing powers of the state of Montana are pledged in the amount necessary for the payment of rent incurred pursuant to a contract authorized by this act.

History: En. 82-3315.3 by Sec. 3, Ch. 242, L. 1974.

82-3315.4. Appointment of architect. The department of administration may appoint an architect to draw plans and specifications for the construction of a building authorized by this act, subject to the approval of the state board of examiners.

History: En. 82-3315.4 by Sec. 4, Ch. 242, L. 1974.

82-3315.5. Contract provisions. The rental contract shall be for a period not to exceed twenty (20) years with an option to purchase at the end of specific periods determined by the department of administration and clearly defined in the contract for each individual project. The option to purchase at the end of the contract period shall not exceed the amount of fifty thousand dollars (\$50,000). The contract shall provide for the appointment of a trustee with sufficient powers to protect the state's interest in the building and any property conveyed as a building site. The contract shall contain such other provisions as determined by the department of administration to be necessary.

History: En. 82-3315.5 by Sec. 5, Ch. 242, L. 1974.

82-3315.6. Rent payments. Each month the department or departments occupying the building shall pay rent in an amount determined by the department of administration to be sufficient to pay the total cost of renting and maintaining the building. All rents collected shall be deposited in a separate account and are hereby appropriated for the purpose of paying the

contracted rental payments and the expense of maintaining the building. At any time the amount in the account is insufficient to pay a rental payment that is due, the department of administration is authorized to transfer from the general fund an amount sufficient to make the payment.

History: En. 82-3315.6 by Sec. 6, Ch. 242, L. 1974.

82-3315.7. Awarding contract. In awarding a contract, the department of administration shall follow the same procedures that are required for the award of a contract to construct a state-owned building. The department shall have the authority to reject any and all bids.

History: En. 82-3315.7 by Sec. 7, Ch. 242, L. 1974.

82-3315.8. Compliance with state laws and regulations. All buildings built or leased or purchased under this act must comply with all laws, safety codes, rules and regulations of the state of Montana.

History: En. 82-3315.8 by Sec. 8, Ch. 242, L. 1974.

82-3316. Authority to construct buildings. (1) Except as provided in subsection (2) of this section, a building costing more than twenty-five thousand dollars (\$25,000) may not be constructed without the consent of the legislative assembly. When a building costing more than twenty-five thousand dollars (\$25,000) is to be financed in such a manner as not to require legislative appropriation of moneys, such consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in section 75-8503, if they are to be financed wholly from the revenues therein described.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private moneys, if the construction of the building will not result in any new programs.

History: En. Sec. 16, Ch. 271, L. 1963; amd. Sec. 2, Ch. 13, L. 1967; amd. Sec. 83, Ch. 326, L. 1974.

Compiler's Notes

Section 75-216, referred to in subdivision (2) (b) of this section, was repealed by Sec. 63, Ch. 2, Laws 1971. Similar provisions are now contained in sec. 75-8503.

Amendments

The 1967 amendment substituted "may" for "shall" after "such consent" near the end of subsection (1); substituted "Montana university system" for "university of Montana" near the beginning of subsection (2)(b); substituted "revenue producing facilities referred to in section

75-216" for "residence halls, dormitories, apartments and other student housing facilities; dining rooms and halls and other food service facilities; and student union building and facilities" in subsection (2) (b); and added "if they are to be financed wholly from the revenue therein described" at the end of subsection (2)(b).

The 1974 amendment substituted "75-8503" in subdivision (2)(b) for "75-216"; and made a minor change in phraseology.

Effective Date

Section 3 of Ch. 13, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 2, 1967.

82-3317. Supervision of construction of buildings. (1) For the construction of a building costing more than ten thousand dollars (\$10,000.00) the department of administration shall:

(a) to (e). * * * [Same as parent volume.]

(f) Concur in construction projects where the proposed cost is less than ten thousand dollars (\$10,000.00), but more than three thousand dollars (\$3,000.00), provided that before any contract is approved for construction, alteration or improvement no less than three (3) separate informal bids shall be procured from bona fide contractors duly licensed as such in the state of Montana.

(g) Not require the provisions of Montana law relating to advertising, bidding or supervision where proposed construction costs are less than three thousand dollars (\$3,000.00).

(2) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to ensure compliance with the plans and specifications for the construction of such buildings. "Construction" shall include construction, repair, alteration, equipping and furnishing during construction, repair or alteration. These services shall be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction revolving account in the revolving fund.

(3) It is the intent of the legislative assembly that student housing and other facilities constructed under the authority of the regents of the university of Montana are subject to the provisions of subsection (1) of this section.

History: En. Sec. 17, Ch. 271, L. 1963; amd. Sec. 2, Ch. 264, L. 1969; amd. Sec. 2, Ch. 24, L. 1973; amd. Sec. 98, Ch. 326, L. 1974.

The 1973 amendment inserted a new subdivision (2) and redesignated former subdivision (2) as (3).

The 1974 amendment substituted "department of administration" for "state controller" in subsection (1).

Amendments

The 1969 amendment added subdivisions (f) and (g) to subsection (1).

82-3318. General powers and duties of department of administration. In carrying out powers relating to the construction of buildings the department of administration may:

- (1) Inspect buildings not under construction.
- (2) Contract with the federal government for advance planning funds.
- (3) Purchase, lease, and acquire by exchange or otherwise, land and buildings in Lewis and Clark county and equipment and furnishings for such buildings.
- (4) Issue and sell bonds and other securities.
- (5) Maintain an inventory of all buildings.
- (6) Appoint a project representative to supervise architects' and consulting engineers' inspection of construction of buildings to assure that all construction is in accordance with the contracts, plans, and specifications.

The cost of supervision may be charged against moneys available for construction.

History: En. Sec. 18, Ch. 271, L. 1963; amd. Sec. 1, Ch. 203, L. 1965; amd. Sec. 84, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of administration" for "controller" at the beginning of the section; deleted a former subdivision (6) relating to a three-member advisory council (see parent volume); and made minor changes in punctuation.

82-3319. Appointment of architects and consulting engineers. The department of administration shall appoint any architect or consulting engineer retained for work on any building to be constructed, remodeled or renovated by the state of Montana, its boards, institutions and agencies, from a list of three (3) architects or consulting engineers proposed by the state board, institution or agency where the work is to be done. Such appointment shall be subject to the approval of the state board of examiners.

History: En. Sec. 19, Ch. 271, L. 1963; amd. Sec. 1, Ch. 231, L. 1965; amd. Sec. 1, Ch. 83, L. 1973; amd. Sec. 98, Ch. 326, L. 1974.

Amendments

The 1973 amendment added "from a list

of three (3) architects or consulting engineers proposed by the state board, institution or agency where the work is to be done" to the end of the first sentence.

The 1974 amendment substituted "department of administration" for "state controller."

82-3321. Pecuniary interest in construction of buildings prohibited. Neither the director of administration nor any employee of the department of administration shall have a direct or indirect pecuniary interest in any contract, transaction, or project involving the construction of a building.

History: En. Sec. 21, Ch. 271, L. 1963; amd. Sec. 85, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "director of administration" for "controller"; and made a minor change in punctuation.

82-3322 to 82-3324. Repealed.

Repeal

Sections 82-3322 to 82-3324 (Sec. 22, Ch. 271, L. 1963; Secs. 1, 2, Ch. 230, L. 1971), relating to the abolishment of various state agencies and transfer of their

records to the department of administration; and the division and administrator of communications, were repealed by Sec. 103, Ch. 326, Laws of 1974.

82-3325. Powers and duties of department of administration regarding communications. The department of administration shall:

(1) Provide communication services to all agencies of state government. The state communications system shall be capable of passing voice, video, data, written information, and other forms of communication to and from distant points. The department shall adopt adequate rules for the use of any communications equipment and facilities now in use or hereafter made available;

(2) Exercise general supervision over all existing communications systems for all agencies of state government;

(3) Plan, review, and approve any additional installations of communications equipment and systems for all agencies of state government. In ap-

proving the installation of additional communications equipment or systems, the department shall first consult with and consider the recommendations and advice of the executive heads of the various state agencies;

(4) Approve standards and procedures for selection, acquisition, and operation of communication equipment;

(5) Ensure that all communications equipment is properly maintained. The department is authorized to contract the equipment maintenance if it is in the state's best interest. The department shall maintain cost records and bill agencies for services rendered;

(6) Provide assistance to the legislature, governor, and state agencies relative to state and interstate communication matters;

(7) Provide a means whereby political subdivisions of the state may utilize the state communications system, upon such terms and under such conditions the department may establish;

(8) Accept federal funds granted by Congress or by executive order for any purposes of this section, as well as gifts and donations from individuals and private organizations or foundations;

(9) Assist in providing interconnecting telecommunications relays among facilities of the educational broadcasting commission.

History: En. Sec. 3, Ch. 230, L. 1971; amd. Sec. 6, Ch. 215, L. 1974; amd. Sec. 86, Ch. 326, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 326, and once by Ch. 215. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 215, Laws of 1974, substituted present subdivision (9) for a subdivision which read "To accept and provide for the technical transmission of programs provided by the division of educational television."

Chapter 326, Laws of 1974, substituted references to "department of administration" throughout the section for references to "division of communications"; substituted "section" for "act" in subdivision (8); deleted "the division of" in subdivision (9) before "educational television"; and made minor changes in punctuation and phraseology.

Repealing Clause

Section 7 of Ch. 215, Laws 1974 read "Sections 75-5710 and 75-5711, R. C. M. 1947, are repealed."

Effective Date

Section 8 of Ch. 215, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 14, 1974.

82-3326. Repealed.

Repeal

Section 82-3326 (Sec. 4, Ch. 230, L. 1971), relating to the advisory council on

communications, was repealed by Sec. 1, Ch. 164, Laws 1973.

82-3327, 82-3328. Repealed.

Repeal

Sections 82-3327 and 82-3328 (Secs. 5, 6, Ch. 230, L. 1971), relating to the transfer of funds, equipment, facilities and em-

ployees to the division of communications, were repealed by Sec. 103, Ch. 326, Laws of 1974.

82-3329. Bases of director's decisions. It is incumbent on the department of administration to base all decisions pertinent to Montana's state

communication services on the factors of cost, quality of service, availability of service, and ability to maintain the system.

History: En. Sec. 7, Ch. 230, L. 1971; amd. Sec. 87, Ch. 326, L. 1974.

partment of administration" for "director"; and made a minor change in punctuation.

Amendments

The 1974 amendment substituted "de-

82-3330. Co-operation with other government agencies not limited. This act shall not be construed so as to prohibit or limit a state agency from availing itself of connection to and co-operation with other state and federal agencies for the purpose of communications and information gathering and distributing services.

History: En. Sec. 8, Ch. 230, L. 1971.

82-3331. Exemption of law enforcement communications system—exception. The provisions of this act shall not apply to the law enforcement communications system, or its successor, except as to the provisions dealing with the purchase, maintenance, and allocation of communication facilities. However, the department of justice shall co-operate with the department of administration to co-ordinate the communications networks of the state.

History: En. Sec. 9, Ch. 230, L. 1971; amd. Sec. 88, Ch. 326, L. 1974.

tence for "law enforcement communications committee"; substituted "department of administration" in the second sentence for "division of communications"; and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted "department of justice" in the second sen-

CHAPTER 35—COMMISSION ON PROBLEMS OF AGING

Section

82-3504, 82-3505. [Transferred.]

82-3501 to 82-3503. Repealed.

Repeal

Sections 82-3501 to 82-3503 (Secs. 1 to 3, Ch. 73, L. 1965; Secs. 1 to 3, Ch. 12, L. 1967), relating to the creation and

composition of the committee on problems of the aging, were repealed by Sec. 52, Ch. 121, Laws of 1974.

82-3504, 82-3505. [Transferred.]

Compiler's Notes

Sections 43, 44, Ch. 121, Laws of 1974

renumbered these sections as secs. 71-2301 and 71-2302.

82-3506. Repealed.

Repeal

Section 82-3506 (Sec. 6, Ch. 73, L. 1965; Sec. 6, Ch. 12, L. 1967), relating to the report of the commission on aging, was

repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

CHAPTER 36—MONTANA ARTS COUNCIL

Section

82-3601. Montana arts council created—purposes.

82-3602. Appointment of council members—qualifications.

82-3603. Terms of council members—chairman and vice-chairman—vacancies—expenses of members.

- 82-3604. Executive committee—functions.
 82-3605. Employment of officers and employees—compensation.
 82-3606. Duties of council.
 82-3607. Gifts and donations received—deposit and use.
 82-3608. Contracts for services and co-operative endeavors.
 82-3609. Fund-raising drives—deposit and use of proceeds.

82-3601. Montana arts council created—purposes. In recognition of the increasing importance of the arts in the lives of the citizens of Montana, of the need to provide opportunity for our young people to participate in the arts and to contribute to the great cultural heritage of our state and nation, and of the growing significance of the arts as an element which makes living and vacationing in Montana desirable to the people of other states, the Montana arts council is hereby created as an agency of state government.

History: En. Sec. 1, Ch. 2, L. 1967.

Title of Act

An act creating the Montana arts council and prescribing its powers and duties.

82-3602. Appointment of council members—qualifications. The Montana arts council shall consist of fifteen (15) members appointed by the governor, by and with the consent of the senate. In so far as possible, the governor shall appoint members from the various geographical areas of the state who have a keen interest in one or more of the arts and a willingness to devote time and effort in the public interest without compensation.

History: En. Sec. 2, Ch. 2, L. 1967.

82-3603. Terms of council members—chairman and vice-chairman—vacancies—expenses of members. The term of office of each member shall be five (5) years; provided, however, that of the members first appointed, five (5) shall be appointed for terms of one (1) year, five (5) for terms of three (3) years, and five (5) for terms of five (5) years. The governor shall designate a chairman and a vice-chairman from the members of the council to serve as such at the pleasure of the governor. The chairman shall be the chief executive officer of the council. Each vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. The members of the council shall not receive any compensation for their services, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members of the council.

History: En. Sec. 3, Ch. 2, L. 1967;
 amd. Sec. 10, Ch. 51, L. 1974.

Amendments

The 1974 amendment deleted a fourth sentence reading "Other than the chair-

man, no member of the council who serves a full five (5) year term shall be eligible for reappointment during a one (1) year period following the expiration of his term."

82-3604. Executive committee—functions. The council may select an executive committee of five (5) members and delegate to the committee such functions in aid of the efficient administration of the affairs of the council as the council deems advisable.

History: En. Sec. 4, Ch. 2, L. 1967.

82-3605. Employment of officers and employees—compensation. The council may employ, and at pleasure remove, administrative officers and other employees as may be needed and fix their compensation within the amounts made available for such purposes.

History: En. Sec. 5, Ch. 2, L. 1967; amd. Sec. 11, Ch. 51, L. 1974.

"Sections 82A-503, 82A-504, 82A-505, 82A-506 and 82A-510, R. C. M. 1947, are repealed."

Amendments

The 1974 amendment substituted "council" for "chairman" at the beginning of the section.

Effective Date

Section 13 of Ch. 51, Laws 1974 provided that the act should be in effect from and after its passage and approval. Approved February 27, 1974.

Repealing Clause

Section 12 of Ch. 51, Laws 1974 read

82-3606. Duties of council. The duties of the council shall be:

(1) To encourage throughout the state the study and presentation of the arts and to stimulate public interest and participation therein;

(2) To co-operate with public and private institutions engaged within the state in artistic and cultural activities, including but not limited to, music, theatre, dance, painting, sculpture, architecture and allied arts and crafts and to make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;

(3) To foster public interest in the cultural heritage of our state and to expand the state's cultural resources;

(4) To encourage and assist freedom of artistic expression essential for the well-being of the arts;

(5) To report as provided in section 2 [82-4002] of this act.

History: En. Sec. 6, Ch. 2, L. 1967; amd. Sec. 39, Ch. 93, L. 1969.

erence to the reporting requirements of section 82-4002 for former provision requiring reports to governor and legislature in even-numbered years.

Amendments

The 1969 amendment substituted the ref-

82-3607. Gifts and donations received—deposit and use. The council may acquire, accept, receive, dispose and administer in the name of the council any gifts, donations, properties, securities, bequests and legacies that may be made to it. Moneys received by donation, gift, bequest or legacy, unless otherwise provided by the donor, shall be deposited in the earmarked revenue fund of the state treasury and used for the general operation of the council. The council is the official agency of the state to receive and disburse any funds made available by the National Foundation on the Arts.

History: En. Sec. 7, Ch. 2, L. 1967.

82-3608. Contracts for services and co-operative endeavors. The council may contract with individuals, organizations and institutions for services or co-operative endeavors furthering the objectives of the council's programs.

History: En. Sec. 8, Ch. 2, L. 1967.

82-3609. Fund-raising drives—deposit and use of proceeds. The council may engage in such fund-raising drives and public contribution campaigns as will contribute to its continued development and support. All revenues received in such manner shall be deposited in the earmarked revenue fund of the state treasury and may not be used for any purposes other than the improvement, development and operation and programs of the council.

History: En. Sec. 9, Ch. 2, L. 1967.

the act should be in effect from and after its passage and approval. Approved January 19, 1967.

Effective Date

Section 10 of Ch. 2, Laws 1967 provided

CHAPTER 37—PLANNING AND ECONOMIC DEVELOPMENT ACT

Section

82-3701. Short title.

82-3702. Declaration of necessity and public policy.

82-3705. Functions of department of intergovernmental relations—state planning.

82-3705.1. Functions of department of intergovernmental relations—community development.

82-3705.2. Functions of department of intergovernmental relations—recreational development.

82-3705.3. Functions of department of intergovernmental relations—economic development.

82-3706. Contracts and agreements for projects and programs—co-operation with other agencies.

82-3701. Short title. This chapter shall be known and may be cited as the "Montana Planning and Economic Development Act of 1967."

History: En. Sec. 1, Ch. 19, L. 1967; amd. Sec. 81, Ch. 348, L. 1974.

commerce; abolishing the planning board; and repealing sections 89-301 through 89-309, R. C. M. 1947.

Title of Act

An act creating a planning and economic development commission and a department of state government to foster planning, growth and diversification of industry and

Amendments

The 1974 amendment substituted "chapter" in this section for "act."

82-3702. Declaration of necessity and public policy. It is hereby declared to be a necessity and the public policy of the state to promote, stimulate, and encourage the planning and development of the economy of the state in order to provide for the social and economic prosperity of its citizens. Such promotion and development of industry, commerce, agriculture, labor, and natural resources of the state requires that cognizance be taken of the continuing migration of people to the urban areas in search of job opportunities, and the fact that Montana is making a needed transition to a diversified economy. Community planning, greater diversification, and attraction of additional industry, accelerated development of natural resources, expansion of existing industry, creation of new uses for agricultural products, greater emphasis on scientific research, development of new markets for the products of the state, and the attainment of a proper balance in the over-all economic base are all necessary in order to create additional employment opportunities, increase personal income, and promote the general welfare of the people of this state. The department of intergovernmental relations shall be regarded as performing a governmental function in carrying out the provisions of this chapter.

History: En. Sec. 2, Ch. 19, L. 1967; amd. Sec. 82, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted "department of intergovernmental relations"

in the last sentence for "planning and economic development commission and department hereinafter created"; substituted "chapter" for "act" in the last sentence; and made minor changes in punctuation and phraseology.

82-3703, 82-3704. Repealed.

Repeal

Sections 82-3703 and 82-3704 (Secs. 3, 4, Ch. 19, L. 1967), relating to the plan-

ning and economic development commission and its chairman, were repealed by Sec. 107, Ch. 348, Laws of 1974.

82-3705. Functions of department of intergovernmental relations—state planning. The department of intergovernmental relations shall:

(A) State Planning.

(1) Develop and adopt a comprehensive plan for the physical development of the state;

(2) Make economic and social studies needed to accomplish the purposes of this chapter;

(3) Co-ordinate and assist regional development groups in the comprehensive development of the resources of the region to the betterment of Montana;

(4) Assemble and correlate information for the purpose of making long range plans for economic and resource development of the state and its subdivisions relating to all of the factors which influence the development of new and existing economic enterprises, including taxes and the regulation of industry;

(5) Provide advice and assistance to Montana business and labor in the field of economic development and bring to the attention of the governor those significant problems adversely affecting economic development which may be relieved by state action;

(6) Locate and maintain information on prime sites for industrial, agricultural, mineral, forestry, commercial, and residential development and on sites of historical importance, and make recommendations for protecting and preserving those sites;

(7) Apply for, accept, and administer grants from the federal government or other public or private sources to accomplish the objectives of this chapter, and enter into contracts, including agreements with adjoining states, with respect to planning involving adjoining states;

(8) Serve as the consultative, co-ordinating, and advisory agency for state departments, officials, and agencies in state planning and for encouraging and aiding local planning bodies, either directly or by securing planning assistance, consulting services, and technical aid, which may include land use, demographic, and economic studies and surveys, and comprehensive plans.

History: En. Sec. 5, Ch. 19, L. 1967; amd. Sec. 83, Ch. 348, L. 1974.

Amendments

The 1974 amendment inserted "of intergovernmental relations" at the beginning

of the section after "department"; substituted "chapter" in subdivisions (A)(2) and (A)(7) for "act"; deleted former subdivisions (B), (C) and (D) which read:

“(B) Community Development.

“(1) Co-operate with and provide technical assistance to county, municipal, state and regional planning commissions, zoning commissions, parks or recreation boards, community development groups, community action agencies, and similar agencies created for the purposes of aiding and encouraging orderly productive and co-ordinated development of the communities of the state.

“(2) Assist the governor in co-ordinating the activities of state agencies which have an impact on solution of community development problems and implementation of community plans.

“(3) Serve as a clearinghouse for information, data, and other materials which may be helpful or necessary to local governments to discharge their responsibilities and provide information on available federal, state financial and technical assistance.

“(4) Carry out continuing studies and analyses of the problems faced by communities within the state and develop such recommendations for administrative or legislative action as appear necessary. In carrying out such studies and analyses, the department shall pay particular attention to the problems of metropolitan, suburban, and other areas in which economic and population factors are rapidly changing.

“(C) Recreational Development.

“(1) Exercise state responsibility for that part of recreational planning and de-

velopment which is directly related to private investment in recreational facilities.

“(2) Assemble and correlate information which may influence the development of recreational enterprises and disseminates the same to persons, firms or corporations with bona fide interest in constructing or maintaining recreational facilities open to the public.

“(D) Economic Development.

“(1) Provide co-ordinating services to aid state and local groups in the promotion of new economic enterprises and conduct publicity and promotional activities in connection therewith.

“(2) Collect and disseminate information regarding the advantages of developing agricultural, recreational, commercial and industrial enterprises within this state.

“(3) Serve as the state's official liaison between persons interested in locating new economic enterprises in Montana and state and local groups seeking new enterprises.

“(4) Aid communities interested in obtaining new business or expanding existing business.

“(5) Study and promote means of expanding markets for Montana products.

“(6) Encourage and co-ordinate public and private agencies or bodies in publicizing the facilities and attractions of the state”; and made minor changes in punctuation and phraseology.

82-3705.1. Functions of department of intergovernmental relations—community development. The department of intergovernmental relations shall: (1) Co-operate with and provide technical assistance to county, municipal, state, and regional planning commissions, zoning commissions, parks or recreation boards, community development groups, community action agencies, and similar agencies created for the purposes of aiding and encouraging orderly, productive, and co-ordinated development of the communities of the state;

(2) Assist the governor in co-ordinating the activities of state agencies which have an impact on solution of community development problems and implementation of community plans;

(3) Serve as a clearinghouse for information, data, and other materials which may be helpful or necessary to local governments to discharge their responsibilities and provide information on available federal and state financial and technical assistance;

(4) Carry out continuing studies and analyses of the problems faced by communities within the state and develop those recommendations for administrative or legislative action as appear necessary. In carrying out the studies and analyses, the department shall pay particular attention to

the problems of metropolitan, suburban, and other areas in which economic and population factors are rapidly changing.

History: En. 82-3705.1 by Sec. 84, Ch. 348, L. 1974.

82-3705.2. Functions of department of intergovernmental relations—recreational development. The department of intergovernmental relations shall: (1) Exercise state responsibility for that part of recreational planning and development which is directly related to private investment in recreational facilities;

(2) Assemble and correlate information which may influence the development of recreational enterprises and disseminate it to persons, firms, or corporations interested in constructing or maintaining recreational facilities open to the public.

History: En. 82-3705.2 by Sec. 85, Ch. 348, L. 1974.

82-3705.3. Functions of department of intergovernmental relations—economic development. The department of intergovernmental relations shall: (1) Provide co-ordinating services to aid state and local groups in the promotion of new economic enterprises and conduct publicity and promotional activities in connection with new economic enterprises;

(2) Collect and disseminate information regarding the advantages of developing agricultural, recreational, commercial, and industrial enterprises within this state;

(3) Serve as the state's official liaison between persons interested in locating new economic enterprises in Montana and state and local groups seeking new enterprises;

(4) Aid communities interested in obtaining new business or expanding existing business;

(5) Study and promote means of expanding markets for Montana products;

(6) Encourage and co-ordinate public and private agencies or bodies in publicizing the facilities and attractions of the state.

History: En. 82-3705.3 by Sec. 86, Ch. 348, L. 1974.

82-3706. Contracts and agreements for projects and programs—co-operation with other agencies. (1) The department of intergovernmental relations may contract for consulting services for the purpose of undertaking and conducting planning and study projects. It may make agreements with other state agencies in order to accomplish its own research programs. It may perform research, but when possible shall make full use of and strengthen the research resources of other state agencies, including the university system. Other state agencies shall provide the department with information which will assist it in carrying out this chapter.

(2) The department shall assist and co-operate with other state agencies and officials, with official organizations of elected officials in the state,

with local governments and officials, and with federal agencies and officials, in carrying out the functions and duties of the department.

(3) It may consult with private groups and individuals, and if the department considers it desirable, hold public hearings to obtain information for the purposes of carrying out this chapter.

History: En. Sec. 6, Ch. 19, L. 1967; amd. Sec. 87, Ch. 348, L. 1974.

section designations; and made minor changes in phraseology.

Amendments

The 1974 amendment inserted "of inter-governmental relations" in the first sentence after "department"; substituted "chapter" for "act" at the end of subsections (1) and (3); inserted the sub-

Repealing Clause

Section 10 of Ch. 19, Laws 1967 read "Sections 89-301, 89-302, 89-303, 89-304, 89-305, 89-306, 89-307, 89-308, and 89-309, R. C. M. 1947 are repealed."

82-3707. Repealed.

Repeal

Section 82-3707 (Sec. 7, Ch. 19, L. 1967), relating to administrators of the

department of planning and economic development, was repealed by Sec. 107, Ch. 348, Laws of 1974.

82-3708. Repealed.

Repeal

Section 82-3708 (Sec. 8, Ch. 19, L. 1967), relating to the annual report of the planning and development commission, was

repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

82-3709. Repealed.

Repeal

Section 82-3709 (Sec. 9, Ch. 19, L. 1967), relating to the abolition of the

state planning board, was repealed by Sec. 107, Ch. 348, Laws of 1974.

CHAPTER 38—POST-ENEMY-ATTACK CONTINUITY IN GOVERNMENT

Section

- 82-3801. Citation of act.
- 82-3802. Succession to governorship.
- 82-3803. Succession to boards of county commissioners.
- 82-3804. Succession in city or town governing bodies.
- 82-3805. Succession for city or town executives.
- 82-3806. Provision for quorum.
- 82-3807. Moving seat of state government.
- 82-3808. Moving seat of local government.
- 82-3809. Duration of operation of act.

82-3801. Citation of act. This act may be cited as "The Post-Enemy-Attack Continuity in Government Act."

History: En. Sec. 1, Ch. 268, L. 1967; amd. Sec. 46, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "and is in implementation of section 46, article V of the Montana constitution" from the end of the section.

Title of Act

An act to provide for post-enemy-attack continuity in government.

82-3802. Succession to governorship. Following an enemy attack, the line of succession to the office of governor shall be extended to members

of the legislative assembly in the order of their seniority. For purposes of this section the term "seniority" means the member who has served in the legislature for the longest continuous period of time up to and including his current term. If two (2) or more members of the legislative assembly have equal seniority, the line of succession among them shall be from eldest to youngest in age.

History: En. Sec. 2, Ch. 268, L. 1967; forth in section 16, article VII of the constitution of Montana" after "office of governor" in the first sentence.
amd. Sec. 47, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "as set

82-3803. Succession to boards of county commissioners. In case of a vacancy on any board of county commissioners occurring during or following an enemy attack if the judge or judges of the judicial district in which the vacancy occurs be not available to make the appointment then the district judges of all other judicial districts shall be authorized to make such appointment, provided, however, that of the available judges in the state of Montana that judge who holds court in the county seat closest to the county seat where the vacancy occurs shall be responsible for making the appointment to fill the vacancy.

History: En. Sec. 3, Ch. 268, L. 1967; vided in section 4, article XVI of the Montana constitution" after "make the appointment" near the middle of the section.
amd. Sec. 48, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "as pro-

82-3804. Succession in city or town governing bodies. In the event that no members of a city or town council or commission are available following an enemy attack then the board of county commissioners of the county in which such city or town is located shall appoint successors to act in place of the unavailable members.

History: En. Sec. 4, Ch. 268, L. 1967.

82-3805. Succession for city or town executives. In the event that the executive head of any city or town is unavailable, following an enemy attack, to exercise the powers and discharge the duties of his office, then those members of the city or town council or commission available shall, by majority vote, choose a successor to act as the executive head of such city or town.

History: En. Sec. 5, Ch. 268, L. 1967.

82-3806. Provision for quorum. If, following an enemy attack, the legislature or any state or local government council, board, or commission is unable to assemble a quorum as defined by the constitution of Montana or by statute then those legislators or members of the council, board, or commission available for duty shall constitute the legislature or board, or commission; and aforesaid quorum requirements shall be suspended; and, where the affirmative vote of a specified proportion of members for the approval of any action would otherwise be required, the same proportion of those voting thereon shall be sufficient.

History: En. Sec. 6, Ch. 268, L. 1967.

82-3807. Moving seat of state government. Following an enemy attack in which the seat of state government at Helena has been rendered unsuitable for use in that capacity the seat of state government may be moved to an alternate location within the boundaries of the state of Montana by proclamation of the governor. He shall consider other Montana cities in order of their population in the last federal census, giving consideration to available communications, office space and such other factors as may seem to him pertinent. Such move of the seat of government shall be effective until it is again moved by proclamation of the governor or action by the legislature.

History: En. Sec. 7, Ch. 268, L. 1967.

82-3808. Moving seat of local government. Following an enemy attack in which the seat of local government of any political subdivision of the state shall have been rendered unsuitable for use in that capacity, in the opinion of the governing body of that political subdivision, such seat of government may be moved by said governing body to such other location as they deem most suitable.

History: En. Sec. 8, Ch. 268, L. 1967.

82-3809. Duration of operation of act. The provisions of this act shall become inoperative at the time of the convening of the first legislative assembly following the emergency which originally made such provisions operative.

History: En. Sec. 9, Ch. 268, L. 1967.

CHAPTER 39—TELETYPEWRITER COMMUNICATIONS SYSTEM FOR LAW ENFORCEMENT

Section

- 82-3901. Establishment of communications system—inclusion of other state agencies.
- 82-3902. Appointment of communications committee—members—term of office—vacancies—meetings—compensation—duties.
- 82-3903. Powers of attorney general in carrying out provisions of act—operational charges—assessments.
- 82-3904. Participation in system by local and other agencies.
- 82-3905. Co-operation with federal law enforcement agencies—attorney general to enter agreements.
- 82-3906. Attorney general's report.

82-3901. Establishment of communications system—inclusion of other state agencies. The attorney general is hereby authorized to establish a permanent law enforcement teletypewriter communications system for the purpose of connecting federal, state, county, and city law enforcement agencies by teletype, and is further authorized to bring into the network, should he and they so desire, any department of Montana state government or its subdivisions outside of law enforcement activities when, in the opinion of the attorney general and the state department or subdivision, such inclusion will materially aid the law enforcement agencies of the state of Montana or its subdivisions in the fight against crime.

History: En. Sec. 1, Ch. 1, Ex. L. 1967;
amd. Sec. 1, Ch. 145, L. 1969.

Compiler's Notes

Chapter 145, Laws 1969 made permanent
the law enforcement teletypewriter com-

munications system. This chapter is identical to Ch. 1, Ex. Laws 1967 except for the insertion of "permanent" after "authorized to establish a" in section 1 (82-3901).

Title of Act

An act creating a state law enforcement teletypewriter communications system; providing for an administrative committee to administer the provisions of the act; providing for duties of the state attorney

general in administering the act; providing for charges to be established and providing for disposition of moneys collected; providing for an appropriation to carry out the provisions of the act.

Amendments

The 1969 amendment inserted "permanent" before "law enforcement teletypewriter communications system" near the beginning of the section.

82-3902. Appointment of communications committee—members—term of office—vacancies—meetings—compensation—duties. To carry out the provisions of the act, the governor shall appoint a state law enforcement teletypewriter communications committee consisting of seven (7) members, each member representing a governmental entity which is participating in the communications system. Membership in the committee shall be as follows:

One (1) county sheriff from a county of the first class.

One (1) county sheriff from a county other than a first class county.

One (1) chief of police from a city of the first class.

One (1) chief of police from a city other than a first class city.

One (1) county commissioner from a county not otherwise represented.

One (1) city mayor from a city not otherwise represented.

One (1) officer or employee of a state department or agency which participates in the communications system.

The term of office of members appointed to the committee shall be as follows: Three (3) of the original appointees shall serve three (3) year terms, such terms to be determined by lot or drawing among the members present at the initial meeting of the committee, and the balance of the members of the committee shall serve for two (2) years each. Vacancies on the committee shall be filled immediately by the governor. The committee shall meet at such times and at such locations as the attorney general may require and may elect officers. Members shall serve without committee compensation since, by the nature of their duties and official capacities, they are full-time, paid, state or subdivision employees subject to compensation and certain travel and per diem allowances in connection with their positions. The committee shall advise the attorney general as to the operation of the state law enforcement teletypewriter communications system, and shall suggest such changes as determined are necessary, and the attorney general shall, within the limits of the funds available under the provisions of this act, make every effort to effectuate the changes suggested, and shall work toward refinement of the system at all levels.

History: En. Sec. 2, Ch. 1, Ex. L. 1967; amd. Sec. 2, Ch. 145, L. 1969.

Cross-References

Committee abolished and functions transferred, sec. 82A-1202(3).

Amendments

The 1969 amendment made no change in this section.

82-3903. Powers of attorney general in carrying out provisions of act—operational charges—assessments. To carry out the provisions of this act, the attorney general is:

(a) Authorized to purchase, lease, or otherwise acquire facilities and equipment necessary to accomplish the purposes of this act, but only after consultation with the committee, and only upon approval of the committee regarding actual physical equipment to be purchased or leased as herein provided.

(b) The attorney general is authorized to employ such personnel as may be necessary to operate such facilities, within the framework of any funds budgeted or prorated on a charge basis against participating agencies as herein identified, but only after approval of the committee.

(c) The attorney general is hereby authorized to establish a monthly operational charge for the teletypewriter communications network, exclusive of personnel services, and such charge shall be prorated among all the various agencies using the system. Such charge shall be approved by the communications committee and shall be billed monthly to the agencies, and payments made as a result of the billing shall be remitted to the attorney general and shall be deposited by him in a special account in the state treasurer's office, and the state auditor is hereby authorized to draw warrants on this account upon request of the attorney general when such moneys are needed to pay any of the costs of keeping the system operative. A strict accounting shall be kept of all receipts and disbursements and shall be available as a matter of record to members of the appropriations committee of the house of representatives as they may require in the performance of their duties. Law enforcement agencies, other than state of Montana or any of its subdivisions, that become ninety (90) days delinquent in payment of any fees approved and assessed hereunder shall be notified that they will be removed from the network, and the committee herein provided shall take the necessary steps to carry out this provision.

(d) A special assessment pro rata shall be made against all participating agencies for personnel necessary to assist in the operation at one central location or key point at which there is a federal intertie, and this assessment shall be made monthly as is the operational assessment, and the same shall be transmitted and deposited and drawn by warrant as are other warrants as previously provided under (c) above, except that the assessment shall not be levied against the one central station for which the assessment is made. Assessments made under the provisions of this act shall be approved by the committee.

History: En. Sec. 3, Ch. 1, Ex. L. 1967;
amd. Sec. 3, Ch. 145, L. 1969.

Amendments

The 1969 amendment made no change in this section.

82-3904. Participation in system by local and other agencies. Any county, city, or other law enforcement agency may, with approval of the committee and the attorney general, connect to the system and participate in it upon payment of, or agreement to pay, those costs established by the committee.

History: En. Sec. 4, Ch. 1, Ex. L. 1967;
amd. Sec. 4, Ch. 145, L. 1969.

Amendments

The 1969 amendment made no change in this section.

82-3905. Co-operation with federal law enforcement agencies—attorney general to enter agreements. The attorney general is hereby directed to contact federal law enforcement agencies or officials relative to federal cost sharing in the teletypewriter communications system, and if such funds are available from federal sources, the attorney general is hereby authorized to sign agreements with the federal agencies, subject to approval of the communications committee, and any federal funds received in any biennium for which Montana funds have been appropriated shall be deposited to the credit of the communication fund and shall be used, if at all possible, to reduce the spending of moneys as herein appropriated from the general fund.

History: En. Sec. 5, Ch. 1, Ex. L. 1967;
amd. Sec. 5, Ch. 145, L. 1969.

Amendments

The 1969 amendment made no change in this section.

82-3906. Attorney general's report. The attorney general shall prepare a report in detail covering the operations of the communications network, the actions of the committee, the accounting of all moneys received and expended, and the need to expand or improve the system, and shall submit such report to the appropriations committee of every legislative assembly at the time funds are requested for the administration of this act.

History: En. Sec. 6, Ch. 1, Ex. L. 1967;
amd. Sec. 6, Ch. 145, L. 1969.

Appropriation

Section 7 of Ch. 1, Ex. Laws 1967 appropriated money for the 1967-1969 biennium.

Amendments

The 1969 amendment made no change in this section.

CHAPTER 40—ANNUAL REPORTS TO GOVERNOR

Section

82-4001. Definitions.

82-4002. Annual reports by state agencies—contents—public inspection—governor's duties—pamphlets—copies.

82-4001. Definitions. As used in this act, unless the context clearly indicates otherwise:

(1) "State agency" means any elective official, office, department, board, bureau, or commission which is of the executive branch of state government.

(2) "Elective official" means the superintendent of public instruction, board of railroad commissioners, secretary of state, attorney general, state auditor, and state treasurer.

History: En. Sec. 1, Ch. 93, L. 1969.

Title of Act

An act to establish uniform reporting requirements for all state executive agencies; amending sections 1-202, 3-106, 3-2914, 4-227, 5-902, 12-404, 26-124, 27-306,

32-2409, 41-803, 41-906, 44-403, 46-2306, 60-127, 62-504, 66-109, 66-408 66-513, 66-904, 66-1009, 66-1311, 66-1410, 66-1504, 66-2203, 66-2334, 69-4106, 70-111, 71-209, 75-107, 77-120, 80-1405, 81-1411, 82-111, 82-302, 82-1002, 82-1519, 82-3606, 87-120, 92-118, 94-9824, and 82-1916, R. C. M. 1947; and re-

pealing sections 40-2712, 41-1607, 41-1608, 1310, 81-206, 81-1702.4, 82-804.3, 82-2704, 46-106, 46-242, 66-2106, 72-138, 75-1309, 75- 82-3506, and 82-3708, R. C. M. 1947.

82-4002. Annual reports by state agencies—contents—public inspection—governor's duties—pamphlets—copies. (1) Before September 1 of each year, each state agency shall submit a written report to the governor of its activities during the immediately preceding fiscal year.

(2) Each report shall contain information prescribed by the governor describing fully the activities of the state agency. Reports shall contain recommendations from each state agency for improvements in programs administered by it.

(3) State agency reports shall be filed in the governor's office and are open for inspection by any person.

(4) From the reports submitted to him the governor shall:

(a) delete extraneous or duplicated data;

(b) standardize the presentation of data to the extent feasible and desirable;

(c) request pertinent additional information he wishes included in the report;

(d) prepare a report for submission to the legislative assembly before the fifth legislative day of any regular session.

(5) Except as provided in subsection (6) of this section, the governor may authorize the publication of a state agency report in pamphlet form. The report in pamphlet form shall be published and distributed by the state agency responsible for reporting.

(6) An elective official may publish an annual report in pamphlet form, in addition to the report to the governor required by subsection (1) of this section, without permission from the governor.

(7) Copies of each report published as provided in subsections (4), (5) and (6) of this section shall be distributed as follows:

(a) two (2) copies to the secretary of state;

(b) two (2) copies to the legislative council;

(c) two (2) copies to the legislative auditor;

(d) one (1) copy to each member of the legislative assembly;

(e) two (2) copies to the director of the budget;

(f) two (2) copies to the librarian of the state historical society;

(g) at least four (4) copies to the state publications distribution center of the state library and additional copies as requested by the state library;

(h) additional distribution in the discretion of the governor or state agency.

History: En. Sec. 2, Ch. 93, L. 1969; amd. Sec. 1, Ch. 134, L. 1971.

Amendments

The 1971 amendment substituted "each year" for "each even-numbered year" in

subsection (1); substituted "fiscal year" for "fiscal biennium" at the end of subsection (1); and substituted "an annual report" for "a biennial report" in subsection (6).

CHAPTER 41—PUBLIC CONTRACTOR'S DEPOSITS FOR WITHDRAWAL OF
RETAINED PAYMENTS

Section

- 82-4101. Contractor may withdraw funds retained by state upon depositing certain obligations with state treasurer—obligations that may be deposited.
- 82-4102. Treasurer authorized to contract for custodial care and servicing of deposited obligations.
- 82-4103. Interest or income on obligations to be paid to contractor—coupon bonds.
- 82-4104. Priority of deductions from retained payments and proceeds of deposited obligation.

82-4101. Contractor may withdraw funds retained by state upon depositing certain obligations with state treasurer—obligations that may be deposited. The contractor under any contract heretofore or hereafter made or awarded by the state of Montana, or any department, agency or political subdivision thereof, including any contract for the construction, improvement, maintenance or repair of any road or highway or the appurtenances thereto, may, from time to time, withdraw the whole or any portion of the sums otherwise due to the contractor under such contract which are retained by the state of Montana, or any department, agency or political subdivision thereof, pursuant to the terms of such contract provided the contractor shall deposit with the treasurer of the state of Montana (1) United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness or United States treasury bills; or (2) bonds or notes of the state of Montana; or (3) bonds of any political subdivision of the state of Montana, of a market value not exceeding par, at the time of deposit; or certificates of deposit drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana and such deposited obligations shall be at least equal in value to the amount so withdrawn from payments retained under such contract.

History: En. Sec. 1, Ch. 194, L. 1969; and Sec. 1, Ch. 101, L. 1971.

Title of Act

An act to allow contractors under contracts with the state of Montana, or any department, agency or political subdivision thereof, to deposit certain governmental obligations with the treasurer of the state of Montana in substitution for that portion of the payments otherwise due to such contractors under state contracts which are retained by the state of Mon-

tana, or any department, agency or political subdivision thereof, pursuant to the terms of such state contracts.

Amendments

The 1971 amendment inserted "or certificates of deposit drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana" near the end of the section; and made a minor change in phraseology.

82-4102. Treasurer authorized to contract for custodial care and servicing of deposited obligations. The treasurer of the state of Montana shall have the power to enter into a contract or agreement with any national bank, state bank, trust company or safe deposit company located in the state of Montana, designated by the contractor, after notice to the owner and surety, to provide for the custodial care and servicing of any obligations deposited with him pursuant to this act. Such services shall include

the safekeeping of said obligations and the rendering of all services required to effectuate the purposes of this act.

History: En. Sec. 2, Ch. 194, L. 1969.

82-4103. Interest or income on obligations to be paid to contractor—coupon bonds. The treasurer of the state of Montana or any national bank, state bank, trust company or safe deposit company located in the state of Montana, designated by the contractor to serve as custodian for the obligations pursuant to section 2 [82-4102] hereof, shall collect all interest or income when due on the obligations so deposited and shall pay the same, when and as collected, to the contractor who deposited the obligation. If deposited in the form of coupon bonds, the treasurer of the state of Montana shall deliver each such coupon as it matures to the contractor.

History: En. Sec. 3, Ch. 194, L. 1969.

82-4104. Priority of deductions from retained payments and proceeds of deposited obligation. Any amount deducted by the state of Montana, or by any department, agency or political subdivision thereof, pursuant to the terms of a contract, from the retained payments otherwise due to the contractor thereunder, shall be deducted first from that portion of the retained payments for which no obligation has been substituted, then from the proceeds of any deposited obligation. In the latter case, the contractor shall be entitled to receive the interest, coupons or income only from those obligations which remain on deposit after such amount has been deducted.

History: En. Sec. 4, Ch. 194, L. 1969.

CHAPTER 42—ADMINISTRATIVE PROCEDURE ACT

Section

- 82-4201. Short title.
- 82-4202. Definitions.
- 82-4203. Rules describing agency organization and procedures—public inspection of rules—model rules.
- 82-4203.1. Legislative review of rules.
- 82-4204. Adoption—amendment or repeal of rules—emergency rules.
- 82-4205. Filing of rules—effective date of rules.
- 82-4206. Publication and distribution of rules and notices.
- 82-4207. Petition for adoption of rules.
- 82-4208. Judicial notice of rules.
- 82-4209. Notice—hearing—record.
- 82-4210. Rules of evidence—official notice.
- 82-4211. Hearing examiners—conduct of hearings—disqualification of hearing examiners and agency members.
- 82-4212. Examination of evidence by agency—proposed orders.
- 82-4213. Final orders—notification.
- 82-4214. Ex parte consultations.
- 82-4215. Licenses.
- 82-4216. Judicial review of contested cases.
- 82-4217. Appeals.
- 82-4218. Declaratory rulings by agencies.
- 82-4219. Declaratory judgments on validity or application of rules.
- 82-4220. Subpoenas and enforcement—compelling testimony.
- 82-4221. Representation.
- 82-4222. Service.
- 82-4223. Construction and effect.
- 82-4224. Repeal of inconsistent provisions.
- 82-4225. Severability.

Title and Definitions

82-4201. Short title. This act shall be known and may be cited as the "Montana Administrative Procedure Act."

History: En. Sec. 1, Ch. 2, Ex. L. 1971.

Title of Act.

An act prescribing uniform procedures for state administrative agencies, including: requirement for adoption of procedural rules; procedures for adoption, amendment or repeal of rules, including emergency rules; filing and publication of rules; judicial notice of rules; notice and hearing requirements for contested

cases; procedures for contested case hearings; procedures for decision making in contested cases; judicial review of contested case decisions; declaratory rulings by agencies; declaratory judgments by courts regarding the validity and application of agency rules; subpoenas, subpoena enforcement and compelling testimony for agency proceedings; and right to representation in agency proceedings; to provide an effective date.

82-4202. Definitions. For purposes of this act:

(1) "Agency" means any board, bureau, commission, department, authority or officer of the state government authorized by law to make rules and to determine contested cases, except that the provisions of this act shall not apply to the following:

(a) the legislature and any branch, committee or officer thereof;

(b) the judicial branches and any committee or officer thereof;

(c) the governor, except that an agency otherwise covered by this act shall not be exempt because the governor has been designated as a member thereof;

(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack;

(e) the state board of pardons, except that said board shall be subject to the requirements of section 3 [82-4203] and 5 [82-4205] of this act and its rules shall be published in the Montana administrative code and register;

(f) the supervision and administration of any penal, mental, medical or eleemosynary institution with regard to the admission, release, institutional supervision, custody, control, care or treatment of inmates, prisoners or patients;

(g) the administration and management of educational institutions;

(h) the financing, construction and maintenance of public works.

(2) "Rule" means each agency regulation, standard or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) declaratory rulings issued pursuant to section 18 [82-4218] of this act;

(c) intra-agency memoranda;

(d) rules relating to the use of public works, facilities, streets and highways, when the substance of such rules is indicated to the public by means of signs or signals;

(e) seasonal rules adopted annually relating to hunting, fishing and trapping when there is a statutory requirement for the publication of such rules, and rules adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;

(f) rules relating to personnel standards, job classifications or salary ranges for agency employees;

(g) uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with section 10 [82-4210] of this act and shall be published in the Montana administrative code and register.

(3) "Contested case" means any proceeding before an agency in which a determination of legal rights, duties or privileges of a party is required by law to be made after an opportunity for hearing. The term includes, but is not restricted to, rate making, price fixing and licensing.

(4) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or other form of permission required by law, but does not include a license required solely for revenue purposes.

(5) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation or amendment of a license.

(6) "Party" means any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(7) "Person" means any individual, partnership, corporation, association, governmental subdivision or public organization of any character other than an agency.

History: En. Sec. 2, Ch. 2, Ex. L. 1971.

Rule Making

82-4203. Rules describing agency organization and procedures—public inspection of rules—model rules. (1) In addition to other rule-making requirements imposed by law, each agency shall:

(a) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests. The notice and hearing requirements contained in section 82-4204 do not apply to adoption of a rule relating to a description of its organization.

(b) Adopt rules of practice, not inconsistent with statutory provisions, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency.

(c) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted or used by the agency in the discharge of its functions.

(d) Upon request of any person or agency, provide a copy of any rule. Unless otherwise provided by statute, an agency may require the payment of the cost of providing such copies.

(2) No agency rule shall be valid or effective against any person or party whose rights have been substantially prejudiced by an agency's failure to comply with the public inspection requirement herein.

(3) The attorney general shall prepare, as soon as is practicable after the passage of this act, a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide in fulfilling the requirements of section 82-4203 (1). The attorney general shall add to, amend or revise the model rules from time to time as he shall deem necessary for the proper guidance of agencies. The model rules, and additions, amendments or revisions thereto, shall be appropriate for the use of as many agencies as is practicable and shall be filed with the secretary of state and provided to any agency upon request. The adoption by an agency of all or part of the model rules shall not relieve the agency from following the rule-making procedures required by this act.

History: En. Sec. 3, Ch. 2, Ex. L. 1971;
amd. Sec. 1, Ch. 240, L. 1974.

Amendments

The 1974 amendment inserted the second sentence of subdivision (1)(a); and made a minor change in style.

82-4203.1. Legislative review of rules. (1) The secretary of state shall, on the date the legislature convenes in regular session in 1974, transmit to both the senate and house of representatives one (1) copy of all rules in the Montana administrative code, not including superseded or repealed rules.

(2) The secretary of state shall, on the date the legislature convenes in each regular session after 1974, transmit to both the senate and house of representatives one (1) copy of all rules, which are in the Montana administrative code, adopted or amended by agencies since the convening of the previous regular session.

(3) The legislature may, by joint resolution, repeal any rule in the Montana administrative code. If a rule is repealed, the legislature shall, in the joint resolution, state its objections to the repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the joint resolution. If the legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains valid.

(4) The legislature may also, by joint resolution, direct a change to be made in any rule in the Montana administrative code or direct the adoption of an additional rule. If a change in any rule or the adoption of an additional rule is directed to be made, the legislature shall, in the joint resolution, state the nature of the change or the additional rule to be made, and its reasons therefor. The agency shall, in the manner provided in the Montana Administrative Procedure Act, adopt a new rule in accordance with the legislative direction.

(5) Rules made by agencies, and changes in rules directed by the legislature, under subsection (4) of this section, shall conform and be pursuant to statutory authority.

History: En. 82-4203.1 by Sec. 1, Ch. 239, L. 1973; amd. Sec. 1, Ch. 236, L. 1974.

Title of Act

An act providing for legislative review of administrative rules.

Amendments

The 1974 amendment substituted "any rule in the Montana administrative code" in the first sentence of subsection (3) for "rules transmitted to it"; and added subsections (4) and (5).

82-4204. Adoption—amendment or repeal of rules—emergency rules.

(1) Prior to the adoption, amendment or repeal of any rule, the agency shall:

(a) Give written notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, place where, and manner in which interested persons may present their views thereon. The notice shall be filed with the secretary of state for publication in the Montana administrative register as provided in section 6 (2) [82-4206 (2)] of this act and mailed to persons who have made timely requests to the agency for advance notice of its rule-making proceedings. The notice shall be published and mailed at least twenty (20) days in advance of the agency's intended action. If any statute shall provide for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained herein. However, in no case shall the notice period be less than twenty (20) days.

(b) Afford interested persons reasonable opportunity to submit data, views or arguments, orally or in writing. In the case of substantive rules, opportunity for oral hearing shall be granted if requested by either ten per cent (10%) or twenty-five (25) of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency or by an association having not less than twenty-five (25) members who will be directly affected. Contested case procedures need not be followed in hearings held pursuant to this section. Where a hearing is otherwise required by statute, nothing herein shall be deemed to alter that requirement. The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency, if requested to do so by an interested person either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

(2) If an agency finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon fewer than twenty (20) days' notice and states in writing its reasons for that finding, it may proceed, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than one hundred and twenty (120) days, but the adoption of an identical rule under subsections (1)

(a) and (1) (b) of this section is not precluded. The sufficiency of the reasons for a finding of imminent peril to the public health, safety or welfare shall be subject to judicial review.

(3) No rule adopted after the effective date of this act shall be valid unless adopted in substantial compliance with subsections (1) and (2) of this section.

(4) An agency may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons with respect to contemplated rule making. An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule making. The powers of the committees shall be advisory only. Nothing herein shall relieve the agency from following rule-making procedures required by this act.

(5) Rules shall not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and the portion which is amplification of the language. Each rule shall include a citation of authority pursuant to which it, or any part thereof, is adopted.

(6) Each agency shall at least annually review its rules to determine if any new rule should be adopted or any existing rule should be modified or repealed.

History: En. Sec. 4, Ch. 2, Ex. L. 1971.

82-4205. Filing of rules—effective date of rules. (1) On or before the 60th day following the effective date of this act, each agency shall file with the secretary of state a certified copy of each rule adopted by it on or before the effective date of this act and remaining in effect. Any rule not so filed shall be deemed to have been abrogated by the agency and shall be void and of no effect.

(2) Each agency shall file with the secretary of state a certified copy of each rule adopted by it subsequent to the effective date of this act. Each rule shall become effective ten (10) days after publication in the Montana administrative register or code as provided in section 6 [82-4206] of this act, except that:

(a) If a later date is required by statute or specified in the rule, the later date shall be the effective date.

(b) Subject to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon filing with the secretary of state, or at a stated date less than ten (10) days following publication in the Montana administrative code or register, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety or welfare. The agency's finding and a brief statement of reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them.

(3) The secretary of state may prescribe a format, style and arrangement for rules which are filed pursuant to this act and may refuse to

accept the filing of any rule that is not in substantial compliance therewith. He shall keep and maintain a permanent register of all rules filed (including superseded and repealed rules), which shall be open to public inspection, and shall provide copies of any rule upon request of any person or agency. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing such copies.

History: En. Sec. 5, Ch. 2, Ex. L. 1971.

82-4206. Publication and distribution of rules and notices. (1) The secretary of state shall, as soon as is practicable after the effective date of this act, compile, index and publish all rules filed pursuant to this act in a publication which shall be known as the Montana administrative code (herein referred to as the code). The code shall be printed or otherwise duplicated, in looseleaf form. The secretary of state shall revise the code, or any part thereof, as often as he deems necessary.

(2) The secretary of state shall each month compile and publish the Montana administrative register (herein referred to as the register). The register shall contain two (2) sections, a rules section and a notice section.

(a) The rules section of the register shall contain all rules filed with the secretary of state since the compilation and publication of the preceding issue of the register, and in the case of the first issue, since the effective date of this act, except that nothing herein shall require that rules filed pursuant to section 5 (1) [82-4205 (1)] be published in the register. This section of the register shall be printed or duplicated in the same style as the code and shall be set up so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code.

(b) The notice section of the register shall contain all rule-making notices filed with the secretary of state pursuant to section 4 [82-4204] of this act since the compilation and publication of the preceding register, and in the case of the first issue of the register, since the effective date of this act. This section shall be printed or duplicated in such manner as to make it easily distinguishable from the rules section of the register and so that separate copies of the notice section can be provided to any person upon request to the secretary of state. The secretary of state may require the payment of the cost of providing such copies.

(c) Each issue of the register shall contain a title page with the name "Montana administrative register," the issue number and date of the register, and a table of contents. Each page of the register shall contain the issue number and date of the register of which it is a part. The secretary of state may include in the register instructions or information to help the user in correctly making insertions or deletions in the code and to keep the code current.

(3) The secretary of state, with the consent of the adopting agency, may omit from the code or register any rule the publication of which would be unduly cumbersome, expensive or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or register contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.

(4) The code shall be arranged, indexed and printed or duplicated in such manner as to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the secretary of state for the printing of as many copies of such separate publications as it may require. The cost of any such separate publications shall be paid by the agency.

(5) The secretary of state shall distribute copies of the code, revisions thereto and the register without charge to the following:

Attorney general, one (1) copy;

Clerk of each court of record of this state, one (1) copy;

Clerk of United States district court for the district of Montana, one (1) copy;

Clerk of United States court of appeals for the ninth circuit, one (1) copy;

Each county clerk of this state, for use of county officials and the public, one (1) copy;

State law library, one (1) copy;

State historical society, one (1) copy;

Each unit of the university of Montana, one (1) copy;

Law library of the university of Montana, one (1) copy;

Montana legislative council, three (3) copies;

Library of congress, one (1) copy;

State law library, for such exchanges as it may establish with libraries of other states, not to exceed fifty (50) copies;

Law library of the university of Montana, for such exchanges as it may establish with institutions of higher education in other states, not to exceed fifty (50) copies.

The secretary of state, clerk of each court of record in the state, clerk of each county in the state and the librarians for the state law library and the university of Montana law library shall maintain a complete, current set of the code, including revisions thereto and additions or changes published in the register. Such persons shall also maintain a file of rule-making notices published in the register during the preceding two (2) years. The secretary of state shall also maintain a permanent register of rule-making notices.

(6) The secretary of state shall make copies of and subscriptions to the code, revisions thereto and the register available to any person at prices fixed to cover publication and mailing costs.

(7) The secretary of state shall determine the cost of supplying copies of the code, revisions thereto and the register. Such cost shall be the approximate cost of printing or duplicating and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of the code, revisions thereto and the register.

(8) All fees collected by the secretary of state shall be deposited to the general fund.

History: En. Sec. 6, Ch. 2, Ex. L. 1971.

82-4207. Petition for adoption of rules. An interested person or, when the legislature is not in session, a member of the legislature on behalf of an interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration and disposition. Within sixty (60) days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making proceedings in accordance with section 82-4204.

History: En. Sec. 7, Ch. 2, Ex. L. 1971; amd. Sec. 2, Ch. 236, L. 1974.

the legislature is not in session, a member of the legislature on behalf of an interested person" in the first sentence; and made a minor change in style.

Amendments

The 1974 amendment inserted "or, when

82-4208. Judicial notice of rules. The courts shall take judicial notice of any rule filed and published under the provisions of this act.

History: En. Sec. 8, Ch. 2, Ex. L. 1971.

Contested Cases

82-4209. Notice — hearing — record. (1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(2) The notice shall include:

(a) A statement of the time, place and nature of the hearing.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

(3) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(4) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(5) The record in a contested case shall include:

(a) All pleadings, motions, intermediate rulings.

(b) All evidence received or considered, including a stenographic record of oral proceedings when demanded by a party.

(c) A statement of matters officially noticed.

(d) Questions and offers of proof, objections, and rulings thereon.

(e) Proposed findings and exceptions.

(f) Any decision, opinion or report by the hearing examiner or agency member presiding at the hearing.

(g) All staff memoranda or data submitted to the hearing examiner or members of the agency as evidence in connection with their consideration of the case.

(6) The stenographic record of oral proceedings or any part thereof shall be transcribed on request of any party. Unless otherwise provided by statute, the cost of the transcription shall be paid by the requesting party.

(7) Findings of facts shall be based exclusively on the evidence and on matters officially noticed.

History: En. Sec. 9, Ch. 2, Ex. L. 1971.

82-4210. Rules of evidence—official notice. (1) Except as otherwise provided by statute relating directly to an agency, agencies shall be bound by common law and statutory rules of evidence. Objections to evidentiary offers may be made and shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(3) A party shall have the right to conduct cross-examinations required for a full and true disclosure of facts, including the right to cross-examine the author of any document prepared by or on behalf of or for the use of the agency and offered in evidence.

(4) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

History: En. Sec. 10, Ch. 2, Ex. L. 1971.

82-4211. Hearing examiners—conduct of hearings—disqualification of hearing examiners and agency members. (1) An agency shall have authority to appoint hearing examiners for the conduct of hearings in contested cases.

(2) Agency members or hearing examiners presiding over hearings shall be authorized to administer oaths or affirmations; issue subpoenas pursuant to section 20 [82-4220] of this act; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer to consider simplification of the issues by consent of the parties. All testimony shall be given under oath or affirmation.

(3) A hearing examiner or agency member may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a hearing examiner or agency

member, the agency shall determine the matter as a part of the record and decision in the case.

History: En. Sec. 11, Ch. 2, Ex. L. 1971.

82-4212. Examination of evidence by agency—proposed orders. When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties may waive compliance with this section by written stipulation.

History: En. Sec. 12, Ch. 2, Ex. L. 1971.

82-4213. Final orders—notification. (1) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

(2) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under section 18 [82-4218], issued after the effective date of this act. No such agency decision or order shall be valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order.

History: En. Sec. 13, Ch. 2, Ex. L. 1971.

82-4214. Ex parte consultations. Unless required for disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or to make findings of fact and conclusions of law in a contested case, after issuance of notice of hearing, shall not communicate with any party or his representative in connection with any issue of fact or law in such case except upon notice and opportunity for all parties to participate.

History: En. Sec. 14, Ch. 2, Ex. L. 1971.

82-4215. Licenses. (1) When the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation or amendment of a license is required by law to be preceded by notice and opportunity for hearing, the provisions of this act concerning contested cases apply.

(2) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(3) No revocation, suspension, annulment, withdrawal or amendment of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

History: En. Sec. 15, Ch. 2, Ex. L. 1971.

82-4216. Judicial review of contested cases. (1) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this act. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

A party who proceeds before an agency under the terms of a particular statute shall not be precluded from questioning the validity of that statute on judicial review, but such party may not raise any other question not raised before the agency, unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) Proceedings for review shall be instituted by filing a petition in district court within thirty (30) days after service of the final decision of the agency, or if a rehearing is requested, within thirty (30) days after the decision thereon. Except as otherwise provided by statute, the petition shall be filed in the district court for the county where the petitioner resides or has his principal place of business, or where the agency maintains its principal office. Copies of the petition shall be promptly served upon the agency and all parties of record.

The petition shall include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved and the ground or grounds specified in sub-

section 7 of this section upon which the petitioner contends he is entitled to relief. The petition shall demand the relief to which the petitioner believes he is entitled, and the demand for relief may be in the alternative.

(3) Unless otherwise provided by statute, the filing of the petition shall not stay enforcement of the agency's decision. The agency may grant, or the reviewing court may order, a stay upon terms which it deems proper.

(4) Within thirty (30) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(6) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(7) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record;
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (g) because findings of fact, upon issues essential to the decision, were not made although requested.

History: En. Sec. 16, Ch. 2, Ex. L. 1971.

82-4217. Appeals. An aggrieved party may obtain review of a final judgment of a district court under this act by appeal to the supreme court within sixty (60) days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from district courts in civil cases. Unless otherwise provided by statute or unless the agency has granted a stay through the completion of the judicial review process;

(1) If appeal is taken from a judgment of the district court affirming an agency decision, the agency decision shall not be stayed except upon order of the supreme court; except that, in cases where a stay is in effect at the time of the filing of notice of appeal, the stay shall be continued by operation of law for twenty (20) days from the date of filing of the notice.

(2) If appeal is taken from a judgment of the district court reversing or modifying an agency decision, the agency decision shall be stayed pending final determination of the appeal unless the supreme court orders otherwise.

History: En. Sec. 17, Ch. 2, Ex. L. 1971.

General Provisions

82-4218. Declaratory rulings by agencies. Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. A declaratory ruling, or the refusal to issue such a ruling, shall be subject to judicial review in the same manner as decisions or orders in contested cases.

History: En. Sec. 18, Ch. 2, Ex. L. 1971.

82-4219. Declaratory judgments on validity or application of rules. The validity or application of a rule may be determined in an action for declaratory judgment if it is found that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The action may be brought in the district court for the county in which the plaintiff resides or has his principal place of business, or in which the agency maintains its principal office. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

History: En. Sec. 19, Ch. 2, Ex. L. 1971.

82-4220. Subpoenas and enforcement—compelling testimony. (1) An agency conducting any proceeding subject to this act shall have the power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers, documents and other objects as may be necessary and proper for the purposes of the proceeding. In furtherance of this power, an agency upon its own motion may, and upon request of any party appearing in a contested case shall, issue subpoenas for witnesses or subpoenas duces tecum. The method for service of subpoenas, witness fees and mileage shall be the same as re-

quired in civil actions in the district courts of the state. Except as otherwise provided by statute, witness fees and mileage shall be paid by the party at whose request the subpoena was issued.

(2) In case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a proceeding before the agency, the agency may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. If the agency fails or refuses to seek enforcement of a subpoena issued at the request of a party, or to compel the giving of testimony deemed material by a party, the party may make such application. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of such order shall be punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district courts. If another method of subpoena enforcement or compelling testimony is provided by statute, it may be used as an alternative to the method provided for in this section.

History: En. Sec. 20, Ch. 2, Ex. L. 1971.

82-4221. Representation. Any person compelled to appear in person or who voluntarily appears before any agency or representative thereof shall be accorded the right to be accompanied, represented and advised by counsel. In a proceeding before an agency, every party shall be accorded the right to appear in person or by or with counsel but this act shall not be construed as requiring an agency to furnish counsel to any such person.

History: En. Sec. 21, Ch. 2, Ex. L. 1971.

82-4222. Service. Except where a statute expressly provides to the contrary, service in all agency proceedings subject to the provisions of this act and in proceedings for judicial review thereof, shall be as prescribed for civil actions in the district courts.

History: En. Sec. 22, Ch. 2, Ex. L. 1971.

82-4223. Construction and effect. Nothing in this act shall be deemed to limit or repeal requirements imposed by statute or otherwise recognized law. No subsequent legislation shall be deemed to supersede or modify any provision of this act, whether by implication or otherwise, except to the extent that such legislation shall do so expressly.

History: En. Sec. 23, Ch. 2, Ex. L. 1971.

82-4224. Repeal of inconsistent provisions. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

History: En. Sec. 24, Ch. 2, Ex. L. 1971.

82-4225. Severability. The provisions of this act are severable, and if any part of provision thereof shall be held void the decision of the

court so holding shall not affect or impair any of the remaining part of provisions of this act.

History: En. Sec. 25, Ch. 2, Ex. L. 1971. read "Time of taking effect. This act shall take effect on December 31, 1972, except that pending proceedings shall not be affected."

Effective Date

Section 26 of Ch. 2, Ex. Laws 1971

CHAPTER 43—STATE INSURANCE PLAN AND TORT CLAIMS

Section

- 82-4301. Short title.
- 82-4302. Definitions.
- 82-4303. Comprehensive insurance plan for state—risks insured—deductible insurance.
- 82-4304. Compliance with state plan required.
- 82-4305. Apportionment of costs—creation of reserve if deductible plan elected.
- 82-4306. Political subdivisions.
- 82-4308. Conditions construed in compliance with act—customary exclusions.
- 82-4309. Political subdivision tax levy to pay premiums.
- 82-4310. Governmental entities liable for torts.
- 82-4311. Filing of claims against state—time of filing.
- 82-4312. Filing of claims against political subdivisions—time for filing.
- 82-4313. Contents of claim—agent filing—inaccuracies.
- 82-4314. Late claims not allowed.
- 82-4315. Approval or denial of claim—notice.
- 82-4316. Action after denial of claim.
- 82-4317. Limitation of actions on claims.
- 82-4318. Compromise or settlement of claim against political subdivision.
- 82-4319. Compromise or settlement of claim against state.
- 82-4320. Jurisdiction of district court—rules of procedure.
- 82-4321. Venue of actions.
- 82-4322. Service of summons on state.
- 82-4322.1. Legislative purpose.
- 82-4323. Governmental entity to be joined as defendant—employees immune from personal liability or from suit in certain cases—recovery against governmental entity bar to recovery against employee—indemnity.
- 82-4324. Punitive damages, attorney fees, interest.
- 82-4325. Recovery from appropriations if no insurance.
- 82-4326. Political subdivision tax levy to pay claim.
- 82-4327. Attachment, execution.

82-4301. Short title. This act shall be known and may be cited as the "Montana Comprehensive State Insurance Plan and Tort Claims Act."

History: En. Sec. 1, Ch. 380, L. 1973. state insurance plan and tort claims procedure to be known as the "Montana Comprehensive State Insurance Plan and Tort Claims Act."

Title of Act

An act providing for a comprehensive

82-4302. Definitions. As used in this act:

- (1) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university or other instrumentality thereof.
- (2) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or public corporation.
- (3) "Governmental entity" means and includes the state and political subdivisions as herein defined.
- (4) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting

on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which this act applies in the event of a claim.

(5) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease or death, sustained by any person and caused by an occurrence, for which the state may be held liable.

(6) "Property damage" means injury or destruction to tangible property, including loss of use thereof, caused by an occurrence, for which the state may be held liable.

(7) "Claim" means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state of Montana.

History: En. Sec. 2, Ch. 380, L. 1973.

82-4303. Comprehensive insurance plan for state—risks insured—deductible insurance. The department of administration shall be responsible for the acquisition and administration of all the insurance purchased for protection of the state, as defined herein.

The department of administration shall, after consultation with the departments, agencies, commissions, and other instrumentalities of the state, provide a comprehensive insurance plan for the state providing insurance coverage to the state in amounts determined and set by the department of administration and shall have the authority to purchase, renew, cancel and modify all policies according to the comprehensive insurance plan. The plan may include property, casualty, liability, crime and fidelity, and any such other policies of insurance as the department of administration may from time to time deem reasonable and prudent.

The department of administration may in its discretion elect to utilize a deductible insurance plan, either wholly or in part. Such a plan shall never have a deductible amount in excess of twenty-five thousand dollars (\$25,000) per occurrence, and shall contain provisions allowing for an aggregate deductible amount not to exceed two hundred fifty thousand dollars (\$250,000) annually under each type of insurance as enumerated in the preceding paragraph.

History: En. Sec. 3, Ch. 380, L. 1973; amd. Sec. 1, Ch. 143, L. 1974.

Amendments

The 1974 amendment inserted "purchased for protection" in the first para-

graph; and substituted "determined and set by the department of administration" in the first sentence of the second paragraph for "not less than the minimum specified in section 7 [82-4307] of this act."

82-4304. Compliance with state plan required. Only the state department of administration may procure insurance under this act except as otherwise provided herein.

All offices, departments, agencies, authorities, commissions, boards, institutions, hospitals, colleges, universities and other instrumentalities of the state hereafter called state participants shall comply with this act and the insurance plan developed by the department of administration.

History: En. Sec. 4, Ch. 380, L. 1973.

82-4305. Apportionment of costs—creation of reserve if deductible plan elected. The department of administration shall apportion the costs of all insurance purchased under this act to the individual state participants and the costs shall be paid to the department.

The department of administration, if it elects to utilize a deductible insurance plan, is authorized to charge the individual state participants an amount equal to the cost of a full-coverage insurance plan, until such time as a reserve in the amount of two hundred fifty thousand dollars (\$250,000), the amount of the total aggregate annual deductible, is created. In each subsequent year, the department shall be authorized to charge a sufficient amount over the actual cost of the deductible insurance to replenish such reserves.

History: En. Sec. 5, Ch. 380, L. 1973.

82-4306. Political subdivisions. All political subdivisions of the state shall have the authority to procure insurance under this act.

History: En. Sec. 6, Ch. 380, L. 1973.

82-4307. Repealed.

Repeal

Section 82-4307 (Sec. 7, Ch. 380, L. 1973), relating to the required limits of

coverage, was repealed by Sec. 2, Ch. 143, Laws of 1974.

82-4308. Conditions construed in compliance with act—customary exclusions. Any insurance policy, rider or endorsement hereafter issued and purchased to insure against any risk which may arise as a result of the application of this act, which contains any condition or provision not in compliance with the requirements of this act, shall not be rendered invalid thereby, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider or endorsement been in full compliance with this act, provided the policy is otherwise valid. This section shall not be construed to prohibit any such insurance policy, rider or endorsements from containing standard and customary exclusions of coverages which the department of administration deems to be reasonable and prudent upon considering the availability and the cost of such insurance coverages.

History: En. Sec. 8, Ch. 380, L. 1973.

82-4309. Political subdivision tax levy to pay premiums. Notwithstanding any provisions of law to the contrary, all political subdivisions

shall have authority to levy an annual property tax in the amount necessary to pay the premium for insurance as herein authorized, even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded thereby; provided, that the revenues derived therefrom may not be used for any other purpose.

History: En. Sec. 9, Ch. 380, L. 1973.

82-4310. Governmental entities liable for torts. Every governmental entity is subject to liability for its torts and those of its employees acting within the scope of their employment or duties whether arising out of a governmental or proprietary function.

History: En. Sec. 10, Ch. 380, L. 1973.

82-4311. Filing of claims against state—time of filing. All claims against the state arising under the provisions of this act shall be presented to and filed with the secretary of state within one hundred twenty (120) days from the date of the occurrence from which the claim arose or when the injury should reasonably have been discovered, whichever is later.

History: En. Sec. 11, Ch. 380, L. 1973.

82-4312. Filing of claims against political subdivisions—time for filing. All claims against a political subdivision arising under the provisions of this act shall be presented to and filed with the clerk or secretary of the political subdivision within one hundred twenty (120) days from the date of the occurrence from which the claim arose or when the injury should reasonably have been discovered, whichever is later.

History: En. Sec. 12, Ch. 380, L. 1973.

82-4313. Contents of claim—agent filing—inaccuracies. All claims presented to and filed with a governmental entity shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six (6) months immediately prior to the time of the occurrence from which the claim arose. If the claimant is incapacitated and unable to present and file his claim within the time prescribed or if the claimant is a minor or if the claimant is a non-resident of the state and is absent during the time within which his claim is required to be filed, the claim may be presented and filed on behalf of the claimant by any relative, attorney or agent representing the claimant. A claim filed under the provisions of this section shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, nature or cause of the claim, or otherwise, unless it is shown that the governmental entity was in fact misled to its injury thereby.

History: En. Sec. 13, Ch. 380, L. 1973.

82-4314. Late claims not allowed. No claim or action shall be allowed against a governmental entity unless the claim has been presented and filed within the time limits prescribed by this act.

History: En. Sec. 14, Ch. 380, L. 1973.

82-4315. Approval or denial of claim—notice. The governmental entity shall act within sixty (60) days after the filing of the claim, if at all, and notify the claimant in writing of its approval or denial. A claim shall be deemed to have been denied if at the end of sixty (60) days the governmental entity has failed to approve or deny the claim.

History: En. Sec. 15, Ch. 380, L. 1973.

82-4316. Action after denial of claim. If the claim is denied, a claimant may institute an action in the district court against the governmental entity in those circumstances where an action is permitted by this act.

History: En. Sec. 16, Ch. 380, L. 1973.

82-4317. Limitation of actions on claims. Every claim against a governmental entity permitted under the provisions of this act shall be forever barred unless an action is begun within two (2) years after the claim is filed with the governmental entity.

History: En. Sec. 17, Ch. 380, L. 1973.

82-4318. Compromise or settlement of claim against political subdivision. The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by this act, subject to the terms of the insurance, if any.

History: En. Sec. 18, Ch. 380, L. 1973.

82-4319. Compromise or settlement of claim against state. The department of administration may compromise and settle any claim allowed by this act, subject to the terms of insurance, if any.

History: En. Sec. 19, Ch. 380, L. 1973.

82-4320. Jurisdiction of district court—rules of procedure. The district court shall have jurisdiction over any action brought under this act and such actions shall be governed by the Montana Rules of Civil Procedure in so far as they are consistent with this act.

History: En. Sec. 20, Ch. 380, L. 1973.

82-4321. Venue of actions. Actions against the state shall be brought in the county in which the cause of action arose or in Lewis and Clark County. In addition, a resident of the state of Montana may bring an action in the county of his residence.

Actions against a political subdivision shall be brought in the county in which the cause of action arose or in any county where the political subdivision is located.

History: En. Sec. 21, Ch. 380, L. 1973.

82-4322. Service of summons on state. In all actions against the state, the state shall be named the defendant, and the summons shall be served on the secretary of state.

History: En. Sec. 22, Ch. 380, L. 1973.

82-4322.1. Legislative purpose. It is the purpose of this act to provide for the immunization and indemnification of public officers and employees sued for their actions, other than intentional tort or felonious acts, taken within the course and scope of their employment.

History: En. 82-4322.1 by Sec. 1, Ch. 239, L. 1974.

Title of Act

An act to amend section 82-4323, R. C. M. 1947, to provide that a governmental entity employer must be joined as party

defendant in certain actions; providing immunity from personal liability or from suit for governmental entity employees in certain cases; providing for indemnity in certain cases; and providing an effective date.

82-4323. Governmental entity to be joined as defendant—employees immune from personal liability or from suit in certain cases—recovery against governmental entity bar to recovery against employee—indemnity. (1) In an action brought against any employee of a state, county, city, town or other governmental entity for a negligent act, error or omission, or other actionable conduct of the employee committed while acting within the course and scope of his office or employment, the governmental entity employer shall be made a party defendant to the action.

(2) Recovery against a governmental entity under the provisions of this act shall constitute a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In any such action against a governmental entity, the employee whose conduct gave rise to the suit shall be immune from suit by reasons of the same subject matter, if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of such employee's employment, unless the claim is based upon an intentional tort or felonious act of the employee.

(3) In any action in which a governmental entity employee is a party defendant, the employee shall be indemnified by the governmental entity employer for any money judgments or legal expenses to which he may be subject as a result of the suit unless the conduct upon which the claim is brought did not arise out of the course and scope of his employment or is an intentional tort or felonious act of the employee.

History: En. Sec. 23, Ch. 380, L. 1973; amd. Sec. 2, Ch. 239, L. 1974.

the end of the first sentence of subsection (2); added the second sentence of subsection (2); and added subsection (3).

Amendments

The 1974 amendment inserted subsection (1); inserted "or recovery of damages" in the first sentence of subsection (2) after "any action"; inserted "error" and "or other actionable conduct" near

Effective Date

Section 3 of Ch. 239, Laws of 1974 provided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

82-4324. Punitive damages, attorney fees, interest. Governmental entities shall not be liable for punitive damages, attorney fees or interest on any claim allowed under the provisions of this act.

History: En. Sec. 24, Ch. 380, L. 1973.

82-4325. Recovery from appropriations if no insurance. In the event no insurance has been procured by the state to pay a claim or judgment arising under the provisions of this act, the claim or judgment shall be paid from the next appropriation of the state instrumentality whose tortious conduct gave rise to the claim.

History: En. Sec. 25, Ch. 380, L. 1973.

82-4326. Political subdivision tax levy to pay claim. Notwithstanding any provisions of law to the contrary and in the event there are no funds available, the political subdivision shall levy and collect a tax, at the earliest time possible, in an amount necessary to pay a claim or judgment arising under the provisions of this act where the political subdivision has failed to purchase insurance to cover a risk created under the provisions of this act.

History: En. Sec. 26, Ch. 380, L. 1973.

Separability Clause

Section 27 of Ch. 380, Laws 1973 read
"The provisions of this act are hereby declared to be severable and if any provision

of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

82-4327. Attachment, execution. No levy of attachment or writ of execution shall issue against any property of a governmental entity for the security or collection of any claim or judgment against any governmental entity under this act.

History: En. Sec. 28, Ch. 380, L. 1973.

CHAPTER 44—WESTERN INTERSTATE NUCLEAR COMPACT

Section

- 82-4401. Western interstate nuclear compact adopted—text.
- 82-4402. Board member appointed by governor—compensation.
- 82-4403. Bylaws and amendments filed with secretary of state.

82-4401. Western interstate nuclear compact adopted—text. The western interstate nuclear compact is entered into and adopted as follows:

WESTERN INTERSTATE NUCLEAR COMPACT

ARTICLE I.

Policy and Purpose

The party states recognize that the proper employment of scientific and technological discoveries and advances in nuclear and related fields and direct and collateral application and adaptation of processes and techniques developed in connection therewith, properly correlated with the other resources of the region, can assist substantially in the industrial progress of the west and the further development of the economy of

the region. They also recognize that optimum benefit from nuclear and related scientific or technological resources, facilities and skills requires systematic encouragement, guidance, assistance, and promotion from the party states on a co-operative basis. It is the policy of the party states to undertake such co-operation on a continuing basis. It is the purpose of this compact to provide the instruments and framework for such a co-operative effort in nuclear and related fields, to enhance the economy of the west and contribute to the individual and community well-being of the region's people.

ARTICLE II.

The Board

(a) There is hereby created an agency of the party states to be known as the "western interstate nuclear board," hereinafter called the board. The board shall be composed of one (1) member from each party state designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the board may provide for the discharge of his duties and the performance of his functions thereon, either for the duration of his membership or for any lesser period of time, by a deputy or assistant, if the laws of his state make specific provisions therefor. The federal government may be represented without vote if provision is made by federal law for such representation.

(b) The board members of the party states shall each be entitled to one (1) vote on the board. No action of the board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present and unless a majority of the total number of votes on the board are cast in favor thereof.

(c) The board shall have a seal.

(d) The board shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The board shall appoint and fix the compensation of an executive director who shall serve at its pleasure and who shall also act as secretary, and who, together with the treasurer, and such other personnel as the board may direct, shall be bonded in such amounts as the board may require.

(e) The executive director, with the approval of the board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the board's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

(f) The board may establish and maintain, independently or in conjunction with any one or more of the party states, or its institutions or subdivisions, a suitable retirement system for its full-time employees. Employees of the board shall be eligible for social security coverage in respect of old age and survivors insurance provided that the board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

(h) The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. The nature, amount and conditions, if any, attendant upon any donation or grant accepted pursuant to this paragraph or upon any borrowing pursuant to paragraph (g) of this article, together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the board.

(i) The board may establish and maintain such facilities as may be necessary for the transacting of its business. The board may acquire, hold, and convey real and personal property and any interest therein.

(j) The board shall adopt bylaws, rules, and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules, and regulations. The board shall publish its bylaws, rules, and regulations in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(k) The board annually shall make to the governor of each party state, a report covering the activities of the board for the preceding year, and embodying such recommendations as may have been adopted by the board, which report shall be transmitted to the legislature of said state. The board may issue such additional reports as it may deem desirable.

ARTICLE III.

Finances

(a) The board shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(b) Each of the board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Each of the board's requests for appropriations pursuant to a budget of estimated expenditures shall be apportioned equally among the party states. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

(c) The board may meet any of its obligations in whole or in part with funds available to it under article II, paragraph (h) of this compact,

provided that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under article II, paragraph (h) hereof, the board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

(d) Any expenses and any other costs for each member of the board in attending board meetings shall be met by the board.

(e) The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become a part of the annual report of the board.

(f) The accounts of the board shall be open at any reasonable time for inspection to persons authorized by the board, and duly designated representatives of governments contributing to the board's support.

ARTICLE IV.

Advisory Committees

The board may establish such advisory and technical committees as it may deem necessary, membership on which may include but not be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies, and officials of local, state and federal government, and may co-operate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

ARTICLE V.

Powers

The board shall have power to:

(a) Encourage and promote co-operation among the party states in the development and utilization of nuclear and related technologies and their application to industry and other fields.

(b) Ascertain and analyze on a continuing basis the position of the west with respect to the employment in industry of nuclear and related scientific findings and technologies.

(c) Encourage the development and use of scientific advances and discoveries in nuclear facilities, energy, materials, products, by-products, and all other appropriate adaptations of scientific and technological advances and discoveries.

(d) Collect, correlate, and disseminate information relating to the peaceful uses of nuclear energy, materials, and products, and other products and processes resulting from the application of related science and technology.

(e) Encourage the development and use of nuclear energy, facilities, installations, and products as part of a balanced economy.

(f) Conduct, or co-operate in conducting, programs of training for state and local personnel engaged in any aspects of:

1. Nuclear industry, medicine, or education, or the promotion or regulation thereof.

2. Applying nuclear scientific advances or discoveries, and any industrial commercial or other processes resulting therefrom.

3. The formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of nuclear energy, materials, products, by-products, installations, or wastes, or to safety in the production, use and disposal of any other substances peculiarly related thereto.

(g) Organize and conduct, or assist and co-operate in organizing and conducting, demonstrations or research in any of the scientific, technological or industrial fields to which this compact relates.

(h) Undertake such nonregulatory functions with respect to non-nuclear sources of radiation as may promote the economic development and general welfare of the west.

(i) Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to nuclear fields.

(j) Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or local laws or ordinances of the party states of their subdivisions in nuclear and related fields, as in its judgment may be appropriate. Any such recommendations shall be made through the appropriate state agency, with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions.

(k) Consider and make recommendations designed to facilitate the transportation of nuclear equipment, materials, products, by-products, wastes, and any other nuclear or related substances, in such manner and under such conditions as will make their availability or disposal practicable on an economic and efficient basis.

(l) Consider and make recommendations with respect to the assumption of and protection against liability actually or potentially incurred in any phase of operations in nuclear and related fields.

(m) Advise and consult with the federal government concerning the common position of the party states or assist party states with regard to individual problems where appropriate in respect to nuclear and related fields.

(n) Co-operate with the atomic energy commission, the national aeronautics and space administration, the office of science and technology, or any agencies successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest.

(o) Act as licensee, contractor or subcontractor of the United States government or any party state with respect to the conduct of any research activity requiring such license or contract and operate such research facility or undertake any program pursuant thereto, provided that this power shall be exercised only in connection with the implementation of one (1) or more other powers conferred upon the board by this compact.

(p) Prepare, publish and distribute, with or without charge, such reports, bulletins, newsletters or other materials as it deems appropriate.

(q) Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states, to co-ordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with nuclear incidents.

The board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact.

Any nuclear incident plan in force pursuant to this paragraph shall designate the official or agency in each party state covered by the plan who shall co-ordinate requests for aid pursuant to article VI of this compact and the furnishing of aid in response thereto.

Unless the party states concerned expressly otherwise agree, the board shall not administer the summoning and dispatching of aid, but this function shall be undertaken directly by the designated agencies and officers of the party states.

The plan or plans of the board in force pursuant to this paragraph shall provide for reports to the board concerning the occurrence of nuclear incidents and the requests for aid on account thereof, together with summaries of the actual working and effectiveness of mutual aid in particular instances.

From time to time, the board shall analyze the information gathered from reports of aid pursuant to article VI and such other instances of mutual aid as may have come to its attention, so that experience in the rendering of such aid may be available.

(r) Prepare, maintain, and implement a regional plan or regional plans for carrying out the duties, powers, or functions conferred upon the board by this compact.

(s) Undertake responsibilities imposed or necessarily involved with regional participation pursuant to such co-operative programs of the federal government as are useful in connection with the fields covered by this compact.

ARTICLE VI.

Mutual Aid

(a) Whenever a party state, or any state or local governmental authorities therein, request aid from any other party state pursuant to this compact in coping with a nuclear incident, it shall be the duty of the

requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people.

(b) Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of such state shall, under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges and immunities as comparable officers and employees of the state to which they are rendering aid.

(c) No party state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on their part while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

(d) All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

(e) Any party state rendering outside aid pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries and maintenance of officers, employees and equipment incurred in connection with such requests: provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost.

(f) Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees in case officers or employees sustain injuries or death while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within the state by or in which the officer or employee was regularly employed.

ARTICLE VII.

Supplementary Agreements

(a) To the extent that the board has not undertaken an activity or project which would be within its power under the provisions of article V of this compact, any two (2) or more of the party states, acting by their duly constituted administrative officials, may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify the purpose or purposes; its duration and the procedure for termination thereof or withdrawal therefrom; the method of financing and allocating the costs of the activity or project; and such other matters as may be necessary or appropriate.

No such supplementary agreement entered into pursuant to this article shall become effective prior to its submission to and approval by the board. The board shall give such approval unless it finds that the supplementary agreement or activity or project contemplated thereby is inconsistent with

the provisions of this compact or a program or activity conducted by or participated in by the board.

(b) Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. However, the board may administer or otherwise assist in the operation of any supplementary agreement.

(c) No party to a supplementary agreement entered into pursuant to this article shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

(d) The provisions to this article shall apply to supplementary agreements and activities thereunder, but shall not be construed to repeal or impair any authority which officers or agencies of party states may have pursuant to other laws to undertake co-operative arrangements or projects.

ARTICLE VIII.

Other Laws and Relations

Nothing in this compact shall be construed to:

(a) Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

(b) Limit, diminish, or otherwise impair jurisdiction exercised by the atomic energy commission, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative act of Congress; nor limit, diminish, affect, or otherwise impair jurisdiction exercised by any officer or agency of a party state, except to the extent that the provisions of this compact may provide therefor.

(c) Alter the relations between the respective internal responsibilities of the government of a party state and its subdivisions.

(d) Permit or authorize the board to own or operate any facility, reactor, or installation for industrial or commercial purposes.

ARTICLE IX.

Eligible Parties, Entry Into Force and Withdrawal

(a) Any or all of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming shall be eligible to become party to this compact.

(b) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law, provided, that it shall not become initially effective until enacted into law by five (5) states.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two (2) years after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall effect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(d) Guam and American Samoa, or either of them may participate in the compact to such extent as may be mutually agreed by the board and the duly constituted authorities of Guam or American Samoa, as the case may be. Such participation shall not include the furnishing or receipt of mutual aid pursuant to article VI, unless that article has been enacted or otherwise adopted so as to have the full force and effect of law in the jurisdiction affected. Neither Guam nor American Samoa shall be entitled to voting participation on the board, unless it has become a full party to the compact.

ARTICLE X.

Severability and Construction

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant thereto shall be liberally construed to effectuate the purposes thereof.

History: En. Sec. 1, Ch. 258, L. 1973.

Title of Act

An act adopting the Western interstate nuclear compact.

82-4402. Board member appointed by governor—compensation. The governor shall appoint the board member. He shall report directly to the governor. Such member, with the approval of the governor, may designate an alternate to represent the state when he is unable to do so. The member, or his alternate, shall receive no compensation in addition to salary for his services as a member of the board, but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties.

History: En. Sec. 2, Ch. 258, L. 1973.

82-4403. Bylaws and amendments filed with secretary of state. Pursuant to article II, paragraph (j) of the compact, the western interstate nuclear board shall file copies of the bylaws and amendments thereto with the secretary of state.

History: En. Sec. 3, Ch. 258, L. 1973.

CHAPTER 45—DEPARTMENT OF INTERGOVERNMENTAL RELATIONS—
EXAMINATION DUTIES

- Section
82-4501. Definition.
82-4502. Examination duties of department.
82-4503. Fees for examination.
82-4504. Special examinations.
82-4505. County, city, and town reports—filing with public officers—violations.
82-4506. School district, fire district, and volunteer fire department reports—filing with public officers.
82-4507. Accounting methods.
82-4508. Publication of department's report to counties—entering in commissioners' minutes.
82-4509. Duty of officers to aid in examination.
82-4510. Power to examine books and papers.
82-4511. Failure of county officers to transmit statements to department—penalty.
82-4512. Access to accounts of public officers—actions to compel.
82-4513. Laws applicable to examinations.
82-4514. Entering department's report in minutes of city or town—publication.

82-4501. Definition. Unless the context requires otherwise, in this chapter "department" means the department of intergovernmental relations provided for in Title 82A, chapter 9.

History: En. 82-4501 by Sec. 88, Ch. 348, L. 1974.

82-4502. Examination duties of department. The department shall annually examine the books and accounts of all:

(1) County clerks, county auditors, county treasurers, district court clerks, sheriffs, public administrators, boards of county commissioners, and other county and municipal officers and boards;

(2) Incorporated cities and towns;

(3) School districts of the first and second class and third class districts maintaining a high school;

(4) Irrigation districts;

(5) Conservancy districts;

(6) Fire districts and volunteer fire departments in unincorporated areas, towns, and villages supported by a mill levy;

(7) Fire department relief associations.

History: En. 82-4502 by Sec. 89, Ch. 348, L. 1974.

82-4503. Fees for examination. The fees for the examinations provided for in section 82-4502 are:

(1) For the examination of county clerks, county auditors, county treasurers, district court clerks, sheriffs, public administrators, boards of county commissioners, all other county and municipal officers and boards,

and incorporated cities and towns, eighty dollars (\$80) a day for each person engaged in the examination, to be paid to the state treasurer and credited to the state general fund;

(2) For the examination of school districts, irrigation districts, and conservancy districts, seventy dollars (\$70) a day for each person engaged in the examination, to be paid to the state treasurer and credited to the state general fund;

(3) For the examination of fire districts and volunteer fire departments, seven dollars and fifty cents (\$7.50) an hour for each person engaged in the examination, to be paid to the state treasurer and credited to the state general fund;

(4) For the examination of fire department relief associations, on the basis of the funds of the association:

(a) If the fund is more than one thousand dollars (\$1,000) and less than five thousand dollars (\$5,000), ten dollars (\$10);

(b) If the fund is from five thousand dollars (\$5,000) to ten thousand dollars (\$10,000), twenty-five dollars (\$25);

(c) If the fund is more than ten thousand dollars (\$10,000), thirty-five dollars (\$35). Fees for the examination of fire department relief associations shall be paid to the state treasurer before July 1 and credited to the state general fund.

History: En. 82-4503 by Sec. 90, Ch. 348, L. 1974.

82-4504. Special examinations. In addition to the annual examinations required by section 82-4502, the department may at any time conduct a special examination of the books and accounts of a county, city, town, school district, irrigation district, high school, or other county or municipal office, board, or commission which has the control, management, collection, or disbursement of public money. The fee for a special examination is eighty dollars (\$80) a day for each person engaged in the examination and shall be paid to the state treasurer for credit to the state general fund.

History: En. 82-4504 by Sec. 91, Ch. 348, L. 1974.

82-4505. County, city, and town reports—filing with public officers—violations. (1) Within sixty (60) days after the examination of a county, city, or town, the department must make a report of the examination to the board of county commissioners, the city or town council, and the county, city, or town attorney. If a violation of law or nonperformance of duty is found on the part of an officer or board, the officer or board must be proceeded against by the attorney general, or county, city, or town attorney as provided by law.

(2) The county attorneys and the attorneys of the cities and towns shall report to the department, within thirty (30) days after receiving from the department the report of an examination of a county, city, or town, the proceedings instituted or to be instituted relating to violations of law and nonperformance of duty.

(3) If a county or city attorney refuses or neglects to notify the department within thirty (30) days after receiving the report of an examination of a county, city, or town, as to the proceedings he has instituted or is about to institute against an officer for violations of law or nonperformance of duty, as evidenced by matters of record, and as set forth in the department's report, the department may withhold the salary of the county or city attorney by filing notice with the proper officials, until a satisfactory explanation has been made to the department. If the county or city attorney fails or refuses to prosecute the case, the department may employ an attorney to prosecute the case at the expense of the county, city, or town.

History: En. 82-4505 by Sec. 92, Ch. 348, L. 1974.

82-4506. School district, fire district, and volunteer fire department reports—filing with public officers. (1) A copy of the department's report of its examination of a school district shall be filed with the county superintendent of schools, the state superintendent of public instruction, and the clerk of the school district. A citizen of the state may inspect, copy, and publish any of the facts contained in the report.

(2) A copy of the department's report of its examination of a fire district or volunteer fire department shall be filed with the clerk and recorder of the county in which the fire district or fire department is located.

History: En. 82-4506 by Sec. 93, Ch. 348, L. 1974.

82-4507. Accounting methods. The department shall prescribe the general methods and details of accounting for the receipt and disbursement of all moneys belonging to counties, cities, towns, and school districts, and shall establish in those offices general methods and details of accounting. County, city, town, and school district officers shall conform with the standards prescribed by the department.

History: En. 82-4507 by Sec. 94, Ch. 348, L. 1974.

82-4508. Publication of department's report to counties—entering in commissioners' minutes. Upon the receipt of the department's report covering the examination of the affairs of a county, the board of county commissioners of that county shall have the report entered and made a part of the minutes of the next regular meeting of the board. However, the report shall not be published by the board of county commissioners as a part of the minutes of its proceedings. The department shall, at the time the report is forwarded to the county commissioners, send a copy to the official newspaper of the county for publication. The report shall be published once in the official newspaper immediately, and is a charge against the county at the rate provided for by contract for printing proceedings of the county commissioners.

History: En. 82-4508 by Sec. 95, Ch. 348, L. 1974.

82-4509. Duty of officers to aid in examination. (1) The officers and employees of all counties, cities, and other local governments subject to examination by the department shall afford all reasonable facilities for the department's examination and shall furnish information to the department, under oath, in a manner prescribed by the department.

(2) An officer or person violating this section is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six (6) months, or by fine not exceeding five hundred dollars (\$500), or both.

History: En. 82-4509 by Sec. 96, Ch. 348, L. 1974.

82-4510. Power to examine books and papers. The department may examine any books, papers, accounts, and documents in the office or possession of a county, city, or local government referred to in this chapter, and may send for persons or papers and examine under oath any person concerning them.

History: En. 82-4510 by Sec. 97, Ch. 348, L. 1974.

82-4511. Failure of county officers to transmit statements to department—penalty. (1) If a county clerk fails to send to the department a copy of any quarterly report required by the department, within ten (10) days after the end of a quarter, or an annual financial statement of the county within forty (40) days after the end of the fiscal year, then he shall forfeit to the county one hundred dollars (\$100) to be deducted from his salary by the board of county commissioners of the county on notice of the failure from the department.

(2) If an officer refuses or neglects to comply with a lawful regulation prescribed by the department under authority of section 82-4507, or to submit a required report, the salary of that report officer shall, on request of the department to the proper official, be withheld until the officer obeys, and the department certifies approval to the disbursing official.

History: En. 82-4511 by Sec. 98, Ch. 348, L. 1974.

82-4512. Access to accounts of public officers—actions to compel. (1) The department may count the cash, verify the bank accounts, and verify all accounts of a public officer whose accounts it is examining under law.

(2) If a county, city, town, or school district officer refuses to accord the department access during an examination of the officer's accounts to his cash, bank accounts, or any of the papers, vouchers, or records of his office, or if the department, after counting the cash and verifying the bank accounts of that officer, finds that a shortage exists in the accounts of that officer, the department shall immediately file a verified preliminary report showing the refusal of that officer or the existence of the shortage, and the amount or approximate amount of the shortage, with the board of county commissioners if the officer is a county or school district officer, and with the city or town council if the officer is a city or town officer.

Upon the filing of the statement, the officer shall immediately be suspended from the duties and emoluments of his office, and the board of county commissioners or the city or town council shall appoint some qualified person to the office, pending completion of the examination.

(3) Upon the completion of the audit or examination of the accounts of the officer by the department, if a shortage existed in the accounts of the officer on the date of the commencement of the examination, the department shall file with the board of county commissioners or with the city or town council a verified final report of the examination or audit, showing the shortage. The right of the officer to the office is then forfeited, and the office becomes vacant as of the date of the suspension of the officer. The person appointed to the office upon the suspension of the officer shall hold the office until the election and qualification of his successor, as provided by law.

(4) An officer whose right to office has been forfeited may, within ten (10) days after the filing of the department's final report or audit, begin in the district court of the proper judicial district a proceeding in quo warranto to test the right of his successor to hold the office, and to test the accuracy of the final report and audit of the department.

History: En. 82-4512 by Sec. 99, Ch. 348, L. 1974.

82-4513. Laws applicable to examinations. All laws pertaining to examination of the books and accounts of county officers also apply to examination of the books and accounts of incorporated cities and towns and school districts of the first and second class.

History: En. 82-4513 by Sec. 100, Ch. 348, L. 1974.

82-4514. Entering department's report in minutes of city or town—publication. Upon receipt of the department's report covering the examination of the affairs of an incorporated city or town, the mayor and the members of the city council or city commission shall enter the report in the minutes of the next regular meeting. The department shall, at the time the report is forwarded to the city or town officials, and for cities and towns with more than one thousand (1,000) residents send a copy to a newspaper of general circulation for publication. The department shall, at the time the report of examination is forwarded to the city or town officials in cities or towns with one thousand (1,000) or less residents, send a copy of its general comments section to the official newspaper of the city or town for publication. The report shall immediately be published in one issue of that newspaper. The city or town shall pay for publication at a rate to be agreed on but not to exceed that charged boards of county commissioners for printing the reports of the department.

History: En. 82-4514 by Sec. 101, Ch. 348, L. 1974.

TITLE 82A—STATE REORGANIZATION OF EXECUTIVE BRANCH

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CHAPTER 1—GENERAL PROVISIONS

Section

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82A-101. Short title. This title shall be known and may be cited as the "Executive Reorganization Act."

History: En. 82A-101 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 358, L. 1973.

Title of Act

An act to reorganize the executive department of Montana state government in accordance with the constitutional amendment, chapter 1 of the extraordinary session, Laws of Montana, 1969, adopted at the general election of November 3, 1970, and effective under the governor's proclamation, November 20, 1970, which provides that: 'All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive department of state government

and their respective functions, powers, and duties, except for the office of governor, lieutenant governor, secretary of the state, attorney general, state treasurer, state auditor, and superintendent of public instruction, shall be allocated by law among and within not more than twenty (20) departments by no later than July 1, 1973.'; and repealing sections 27-427, 59-901, and 59-902, R. C. M., 1947.

Amendments

The 1973 amendment substituted "title" for "act"; and deleted "of 1971" from the end of the short title.

82A-102. Declaration of policy and purpose. (1) The purpose of this title is to comply with article VI, section 7, of the Montana constitution which requires that all executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties, shall be allocated by law among not more than twenty (20) principal departments so as to provide an orderly arrangement in the administrative organization of state government.

(2) It is the public policy of this state and the purpose of this title to create a structure of the executive branch of state government which is responsive to the needs of the people of this state and sufficiently flexible to meet changing conditions; to strengthen the executive capacity to administer effectively and efficiently at all levels; to encourage greater public participation in state government; to effect the grouping of state agencies into a reasonable number of departments primarily according to function; to provide that the responsibility within the executive branch of state government for the implementation of programs and policies is clearly fixed and ascertainable; and to eliminate overlapping and duplication of effort within the executive branch of state government.

History: En. 82A-102 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 2, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "this title" for "this act" throughout the section; substituted "executive branch" for "executive department" throughout the section; substituted the reference to the 1972 constitution in subsection (1) for a reference to the 1970 constitutional amendment; inserted "bureaus" in subsection (1); deleted the state treasurer and state auditor from the list of officers excepted

from the operation of subsection (1); deleted "by no later than July 1, 1973" at the end of subsection (1); added "so as to provide an orderly arrangement in the administrative organization of state government" at the end of subsection (1); deleted subsections (3) and (4), which declared the legislative intent to change functions with the least possible disruption of service and the least expense, and the intent not to change statutory functions unless specifically expressed; and made minor changes in phraseology and style.

82A-103. Definitions. As used in this title:

(1) "Executive branch" means the executive branch of state government referred to in the Montana constitution, articles III and VI.

(2) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive branch of state government.

(3) "Unit" means an internal subdivision of an agency, created by law or by administrative action, including a division, bureau, section, or department, and an agency allocated to a department for administrative purposes only by this title.

(4) "Department" means a principal functional and administrative entity, created by this title, within the executive branch of state government; is one of the twenty (20) principal departments permitted under the constitution; and includes its units.

(5) "Department head" means a director, commission, board, commissioner, or constitutional officer in charge of a department created by this title.

(6) "Director" means a department head specifically referred to as a director in this title, and does not mean a commission, board, commissioner, or constitutional officer.

(7) "Advisory capacity" means furnishing advice, gathering information, making recommendations, and performing such other activities as may be necessary to comply with federal funding requirements, and does not mean administering a program or function or setting policy.

(8) "Function" means a duty, power, or program, exercised by or assigned to an agency, whether or not specifically provided for by law.

(9) "Quasi-judicial function" means an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies. The term includes, but is not limited to, the functions of interpreting, applying, and enforcing existing rules and laws; granting or denying privileges, rights, or benefits; issuing, suspending, or revoking licenses, permits, and certificates; determining rights and interests of adverse parties; evaluating and passing on facts; awarding compensation; fixing prices; ordering action or abatement of action; adopting procedural rules; holding hearings; and any other act necessary to the performance of a quasi-judicial function.

(10) "Quasi-legislative function" generally means making or having the power to make rules or set rates and all other acts connected with or essential to the proper exercise of a quasi-legislative function.

History: En. 82A-103 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 3, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "this title" for "this act" throughout the section; substituted "executive branch" for "executive department" throughout the section; changed the reference at the end of subdivision (1) so as to refer to the appropriate articles of the 1972 constitution; deleted subdivision (2) defining "re-

organization amendment" and subdivision (12) defining "investment function"; re-numbered subdivisions (3) to (11) as (2) to (10); deleted "or transferred" following "allocated" in subdivision (3); deleted "Except when used in connection with the name of an agency existing before the effective date of the applicable chapter of this act" from the beginning of subdivision (4); and substituted "constitution" for "reorganization amendment" in subdivision (4).

82A-104. Structure of executive branch of state government. (1) In accordance with the constitution, all executive and administrative offices,

boards, commissions, agencies, and instrumentalities of the executive branch of state government, and their respective functions, are allocated by this title among and within the following departments or entities:

- (a) Department of administration.
- (b) Department of agriculture.
- (c) Department of business regulation.
- (d) State board of education.
- (e) Department of fish and game.
- (f) Department of health and environmental sciences.
- (g) Department of highways.
- (h) Department of institutions.
- (i) Department of intergovernmental relations.
- (j) Department of labor and industry.
- (k) Department of justice.
- (l) Department of livestock.
- (m) Department of military affairs.
- (n) Department of natural resources and conservation.
- (o) Department of professional and occupational licensing.
- (p) Department of public service regulation.
- (q) Department of revenue.
- (r) Department of social and rehabilitation services.
- (s) Department of state lands.

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a "division." Each division shall be headed by an "administrator."

(b) The principal unit of a division is a "bureau." Each bureau shall be headed by a "chief."

(c) The principal unit of a bureau is a "section." Each section shall be headed by a "supervisor."

History: En. 82A-104 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 250, L. 1973; amd. Sec. 4, Ch. 358, L. 1973; amd. Sec. 2, Ch. 51, L. 1974.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 250 and once by Ch. 358. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 250, Laws of 1973, substituted "justice" for "law enforcement and public safety" in subdivision (k).

Chapter 358, Laws of 1973, substituted "executive branch" for "executive department" and "this title" for "this act" throughout the section; substituted "constitution" for "reorganization amendment" in subsection (1); rearranged the departments under subsection (1) in alphabetical order; deleted subsection (2) referring to the constitutional offices and preserving their functions; and renumbered subsection (3) as (2).

The 1974 amendment inserted "or entities" after "departments" near the beginning of subdivision (1); and substituted "State board of education" in subdivision (1)(d) for "Department of education."

82A-105. Policy-making authority and administrative powers of governor. In accordance with article VI, section 4 of the Montana constitution, the governor is the chief executive officer of the state. Subject to the constitution and law of this state, the governor shall formulate and ad-

minister the policies of the executive branch of state government. In the execution of these policies, the governor has full powers of supervision, approval, direction, and appointment over all departments and their units, other than the office of the lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction, except as otherwise provided by law. Whenever a conflict arises as to the administration of the policies of the executive branch of state government, except for conflicts arising in the office of the lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction, the governor shall resolve the conflict, and the decision of the governor is final.

History: En. 82A-105 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 5, Ch. 358, L. 1973.

Amendments

The 1973 amendment changed the constitutional reference in the first sentence so

as to refer to the 1972 constitution; changed references to the executive department to the executive branch throughout the section; and deleted "state treasurer" following "attorney general" in the third and fourth sentences.

82A-106. Appointment and qualifications of department heads. (1)

The governor shall appoint at the beginning of each gubernatorial term each department head who is a director in this title.

(2) An appointment of a director by the governor is subject to the confirmation of the senate, except that the governor may appoint a director to assume office before the senate meets in its next regular session to consider the appointment. A director so appointed is vested with all the functions of the office upon assuming the office, and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a director, the governor shall make a new appointment.

(3) A director serves at the pleasure of the governor. The governor may remove a director at any time and appoint a new director to the office.

(4) The governor shall select a director on the basis of his professional and administrative knowledge and experience and such additional qualifications as are provided by law.

(5) If a vacancy occurs in the office of a director, the governor shall appoint a new director to serve at the pleasure of the governor.

(6) Heads of departments who are not directors shall be elected or appointed and serve, and their vacancies filled, as provided by law.

History: En. 82A-106 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 6, Ch. 358, L. 1973.

beginning of each gubernatorial term" in subsection (1); and substituted "title" for "act" at the end of subsection (1).

Amendments

The 1973 amendment inserted "at the

82A-107. Duties and powers of department heads. (1) Except as otherwise provided by law, each department head shall:

(a) Supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this title or other law.

(b) Establish the policy to be followed by the department and employees.

(c) Compile and submit reports and budgets for the department as required by law or requested by the governor.

(d) Provide the governor with any information that he requests at any time on the operation of the department.

(e) Represent the department in communications with the governor.

(f) Prescribe rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of the employees; the distribution and performance of business; and the custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices and the governor may not prescribe rules for them.

(g) Subject to the approval of the governor, establish the internal organizational structure of the department and allocate the functions of the department to units to promote the economic and efficient administration and operation of the department. The internal structure of the department shall be established in accordance with section 82A-104(2).

(h) Subject to law, and the state merit system if applicable, establish and make appointments to necessary subordinate positions, and abolish unnecessary positions.

(i) Maintain a central office in Helena for the department, and such other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided by law, each department head may:

(a) Subject to law, and the state merit system if applicable, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department.

(b) Delegate any of the functions vested in the department head to subordinate employees.

(c) Apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other source in administering the department's functions.

(d) Enter into agreements with federal, state, and local agencies necessary to carry out the department's functions.

History: En. 82A-107 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 7, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "by law" for "in this act" in the preliminary clause of subsection (1); substituted "title" for "act" in subdivision (1)(a); deleted "state treasurer" from the second sentence in subdivision (1)(f); inserted "Subject to the approval of the governor"

at the beginning of subdivision (1)(g); substituted "by law" for "within this act" in the preliminary clause of subsection (2); deleted "except the power to remove employees of the department and fix their compensation" from the end of subdivision (2)(b); deleted the former subdivision (2)(c) relating to bonds required of employees; and added subdivisions (2)(c) and (d); and made a minor change in style.

82A-108. Allocation for administrative purposes only. (1) An agency allocated to a department for administrative purposes only in this title shall:

(a) Exercise its quasi-judicial, quasi-legislative, licensing, and policy-making functions independently of the department and without approval or control of the department.

(b) Submit its budgetary requests through the department.

(c) Submit reports required of it by law or by the governor through the department.

(2) The department to which an agency is allocated for administrative purposes only in this title shall:

(a) Direct and supervise the budgeting, record keeping, reporting, and related administrative and clerical functions of the agency.

(b) Include the agency's budgetary requests in the departmental budget.

(c) Collect all revenues for the agency and deposit them in the proper fund or account; except as provided in section 82A-1603(6), the department may not use or divert the revenues from the fund or account for purposes other than provided by law.

(d) Provide staff for the agency. Unless otherwise indicated in this title, the agency may not hire its own personnel.

(e) Print and disseminate for the agency any required notices, rules, or orders adopted, amended, or repealed by the agency.

(3) The department head of a department to which any agency is allocated for administrative purposes only in this title shall:

(a) Represent the agency in communications with the governor.

(b) Allocate office space to the agency as necessary, subject to the approval of the department of administration.

History: En. 82A-108 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 8, Ch. 358, L. 1973.

inary clauses in subsections (1), (2) and (3); substituted "this title" for "this act" throughout the section; and made a minor change in style.

Amendments

The 1973 amendment deleted "or transferred" after "allocated" in the prelim-

82A-109. Prior right of department head to agencies and records. Each department head designated by this title or appointed by the governor has, before assuming the office of the department head, full access to all agencies and their records within the department created by this title for the purpose of formulating plans for internal organization and the fiscal and personnel administration of the department.

History: En. 82A-109 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "this title" for "this act" in two places.

82A-110. Creation of advisory councils. (1) A department head or the governor may create advisory councils. An official of the executive branch of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, or an agency, may also create advisory councils, but only if federal law or regulation requires that such

official or agency create the advisory council as a condition to the receipt of federal funds.

(2) Each advisory council created under this section shall be known as the "_____ advisory council."

(3) The creating authority shall prescribe the composition and advisory functions of each advisory council created; appoint its members, who shall serve at the pleasure of the governor; and specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity as defined in section 82A-103(7).

(5) Unless he is a full-time salaried officer or employee of this state or of any political subdivision of this state, each member is entitled to be paid in an amount to be determined by the department head, not to exceed twenty-five dollars (\$25) for each day in which he is actually and necessarily engaged in the performance of council duties, and he is also entitled to be reimbursed for actual and necessary expenses incurred while in the performance of council duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members, but are entitled to be reimbursed for their actual and necessary expenses.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year each advisory council shall elect a chairman and such other officers as it considers necessary.

(7) Unless otherwise specified by the creating authority, each advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor, and may meet at other times on the call of the chairman or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (10) of this section, an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor must file in his office and in the office of the secretary of state a record of the council created showing the council's:

- (a) Name, in accordance with subsection (2) of this section.
- (b) Composition.
- (c) Names and addresses of the appointed members.
- (d) Purpose.
- (e) Term of existence, in accordance with subsection (11) of this section.

(10) The board of public education, the board of regents of higher education, the state board of education, the attorney general, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. They must file a

record of each council created by them in the office of the governor and the office of the secretary of state in accordance with subsection (9) of this section.

(11) An advisory council may not be created to remain in existence longer than two (2) years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by the governor, or by the board of public education, or by the board of regents of higher education, or by the state board of education, or by the attorney general, or by the superintendent of public instruction for those advisory councils created in the manner set forth in subsection (10) of this section. If the existence of an advisory council is extended, they shall specify a new date, not more than two (2) years later, when the existence of the advisory council ends, and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary.

History: En. 82A-110 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 358, L. 1973; amd. Sec. 3, Ch. 51, L. 1974.

Amendments

The 1973 amendment substituted "executive branch" for "executive department" in the second sentence of subsection (1); inserted "or of any political subdivision of this state" in both sentences in subsection (5); substituted "is entitled to be paid" or equivalent terminology throughout subsection (5) for "may be paid"; inserted "actual and necessary" before "expenses" near the end of subsection (5); deleted "executive order of" after "unless ex-

tended by" in the first sentence of subsection (11); and deleted former subsection (12) requiring the filing of a one-time report on advisory bodies.

The 1974 amendment substituted "The board of public education, the board of regents of higher education, the state board of education" at the beginning of subdivision (10) for "The board of education"; and substituted "board of public education, or by the board of regents of higher education, or by the state board of education, or by" near the middle of subdivision (11) for "board of education"; and made a minor change in phraseology.

82A-111. Administratively created agencies—prohibition. The governor, a department head, or any other official of the executive branch of state government, or an agency, may not, by administrative action, create or attempt to create an agency of state government. This section does not apply to:

- (1) Advisory councils created in accordance with section 82A-110.
- (2) Units within the internal structure of a department established under section 82A-107(g).

History: En. 82A-111 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "exec-

utive branch" for "executive department" in the preliminary clause; and made minor changes in style.

82A-112. Quasi-judicial boards. If an agency is designated by law as a quasi-judicial board for the purposes of this section:

(1) The number of and qualifications of its members are as prescribed by law; in addition to those qualifications, at least one (1) member shall be an attorney licensed to practice law in this state.

(2)(a) The governor shall appoint the members. A majority of the members shall be appointed to serve for terms concurrent with the gubernatorial term, and until their successors are appointed and qualified. The

remaining members shall be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term, and until their successors are appointed and qualified. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of his term, and the remaining members in the middle of his term. As used in this subsection, "majority" means the next whole number greater than half.

(b) This subsection does not affect the terms of persons who were members of a continued board on the effective date of the chapter of this title continuing the board; upon the expiration of those terms, members shall be appointed and serve in accordance with this subsection.

(3) The appointment of each member is subject to the confirmation of the senate. However, the governor may appoint a member to assume office before the senate meets at its next regular session to consider the appointment. A member so appointed has all the powers of the office upon assuming that office, and is a *de jure* officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy shall be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which he is appointed.

(5) The governor shall designate the chairman. The chairman may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless he is a full-time salaried officer or employee of this state or of a political subdivision of this state, each member is entitled to be paid twenty-five dollars (\$25) for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for actual and necessary expenses incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members, but are entitled to be reimbursed for their actual and necessary expenses.

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by law.

History: En. 82A-112 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 12, Ch. 358, L. 1973.

Amendments

The 1973 amendment combined former subsection (1) relating to boards created by the 1971 act and former subsection (2) relating to boards continued by the 1971 act; substituted numerical designations for subdivisions that were previously lettered subdivisions of subsections (1) and (2); deleted former subdivision (2)(c), a

saving clause; deleted former subsection (3), relating to hearings and hearing examiners; inserted new matter as subsections (3) and (4); added the second sentence to subsection (5); inserted "or of a political subdivision of this state" in two places in subsection (7); inserted "actual and necessary" before "expenses" at the end of subsection (7); added the second sentence to subsection (8); and made numerous minor changes in phraseology, style and arrangement.

82A-113, 82A-114. Repealed.**Repeal**

Sections 82A-113, 82A-114 (Sec. 1, Ch. 272, L. 1971), relating to functions of

agencies split or not assigned by the reorganization, were repealed by Sec. 21, Ch. 358, Laws 1973.

82A-115. Future agencies and functions. If an agency or a function is not allocated or transferred to a department or a constitutional office by this title or any other act of the legislature, the governor shall, by executive order, allocate that agency for administrative purposes only or function to the appropriate principal department or constitutional office. The governor shall transmit copies of all executive orders issued under this section to the legislature at its next regular session.

History: En. 82A-115 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 13, Ch. 358, L. 1973.

Amendments

The 1973 amendment deleted "of an agency established after the effective date of this chapter" after "function" near the

beginning; substituted "this title" for "this act" in the first sentence; inserted "for administrative purposes only" in the first sentence; substituted "constitutional office" for "unit created by this or any future act"; added the second sentence; and made minor changes in phraseology.

82A-116. Rights of state personnel. Unless otherwise provided in this act, each state officer or employee affected by the reorganization of the executive branch of state government under this title is entitled to all rights which he possessed as a state officer or employee before the effective date of the applicable chapter of this title, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy. This section is not intended to create any new rights for any state officer or employee, but to continue only those rights in effect before the effective date of the applicable chapter of this title or an amendment to this title.

History: En. 82A-116 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted

"branch" for "department" near the beginning; substituted "this title" for "this act" in three places; and added "or an amendment to this title" at the end of the section.

82A-117. Rights to property. The department or unit thereof that succeeds to all or part of the functions of an agency under this title also succeeds to the rights to all real and personal property of that agency relating to the functions or parts of functions transferred. The property includes real property, records, office equipment, supplies, contracts, books, papers, documents, maps, appropriations, accounts within and without the state treasury, funds, vehicles, and all other similar property. However, the department or unit may not use or divert moneys in a fund or account for a purpose other than provided by law. The governor shall resolve any conflict as to the proper disposition of the property, and his decision is final. This section does not apply to property owned by the federal government.

History: En. 82A-117 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 15, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "this title" for "this act" in the first sentence.

82A-118. Rules, regulations, and orders. The department or unit thereof that succeeds to all or part of the functions of an agency under this title also succeeds to the rules, regulations, and orders of that agency relating to the functions or parts of functions transferred. The rules, regulations, and orders of any agency in effect before the effective date of the transfer remain in effect until amended, repealed, superseded, or nullified by proper authority or by law.

History: En. 82A-118 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 16, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "this

title" for "this act" in the first sentence; and substituted "transfer" for "chapter affecting the agency" in the second sentence.

82A-119. Legal proceedings. The transfer or abolition of an agency or function under this title does not affect the validity of any judicial or administrative proceeding pending or which could have been commenced before the effective date of the transfer or abolition, and the department or unit which succeeds to the functions of an agency relating to the proceeding shall be substituted as a party in interest.

History: En. 82A-119 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 17, Ch. 358, L. 1973.

Amendments

The 1973 amendment inserted "The

transfer or abolition of an agency or function under" at the beginning of the section; substituted "this title" for "this act"; and substituted "transfer or abolition" for "applicable chapter of this act."

82A-120. Rights and duties under existing transactions. The rights, privileges, and duties of the holders of bonds and other obligations issued, and of the parties to contracts, leases, indentures, and other transactions entered into, before the effective date of the transfer of functions under this title, by the state or by any agency, officer, or employee thereof, and covenants and agreements as set forth therein, remain in effect, and none of those rights, privileges, duties, covenants, or agreements is impaired or diminished by reason of the transfer of the functions of an agency or the abolition of an agency under this title. The department or unit which succeeds to the functions of an agency is substituted for that agency and succeeds to its rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions.

History: En. 82A-120 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 18, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "trans-

fer of functions under this title" for "applicable chapter of this act" in the first sentence; and substituted "under this title" for "in this act" at the end of the first sentence.

82A-121. References. Unless inconsistent with this title, if an agency is abolished under this title, or if a function of an agency is transferred to another agency, references to the abolished agency or to the agency whose functions were transferred in any law, contract, or other document shall apply to the agency which succeeds to the functions which were transferred.

History: En. 82A-121 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 19, Ch. 358, L. 1973.

Amendments

The 1973 amendment completely rewrote

this section and made it applicable to abolition of agencies or transfer of functions at any time rather than those made by the 1971 reorganization.

82A-122. Federal aid. If any part of this title is ruled to be in conflict with federal requirements which are a prescribed condition to the receipt of federal aid by the state, an agency, or a political subdivision, that part of this title has no effect, and the governor may issue an executive order which substitutes for that part to the extent necessary to effectuate the receipt of federal aid. The order is effective until the legislative assembly again acts upon the matter.

History: En. 82A-122 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 20, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "title" for "act" twice in the first sentence.

Repealing Clauses

Section 3 of Ch. 272, Laws 1971 read "Sections 59-901 and 59-902, R. C. M. 1947, are repealed."

Section 21 of Ch. 358, Laws 1973 read "Sections 82A-113, 82A-114 and 82A-123, R. C. M. 1947, are repealed."

Separability Clause

Section 5 of Ch. 272, Laws 1971 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 6 of Ch. 272, Laws 1971 read "Chapters 1 and 21 of Section 1 of this act and Sections 4 and 5 of this act are effective upon its passage and approval. Chapters 2 through 20 of section 1 of this act are effective upon the date the governor signs an executive order implementing the chapter or on December 31, 1972, whichever occurs first. The governor shall file the executive order with the secretary of state on the day the order is signed. The secretary of state shall file and record the order and send a copy of the order to each addressee on his official mailing list for the Revised Codes of Montana and to each addressee on the mailing list of the publisher of the Revised Codes of Montana. Section 2 of this act is effective when Chapter 4 of Section 1 of this act is effective, and Section 3 is effective when Chapter 2 of Section 1 of this act is effective."

82A-123. Repealed.

Repeal

Section 82A-123 (Sec. 4, Ch. 272, L. 1971), saving laws not specifically amended

or repealed, except in the event of an irreconcilable conflict, was repealed by Sec. 21, Ch. 358, Laws 1973.

CHAPTER 2—DEPARTMENT OF ADMINISTRATION

Section

- 82A-201. Department of administration—creation—head.
- 82A-201.1. Functions of department.
- 82A-204. Board of investments—allocation—composition—designation.
- 82A-206. Merit system council—allocated—composition.
- 82A-207. Board of examiners—allocated.
- 82A-209. State depository board—allocated.
- 82A-210. Board of administration—composition—terms—allocated.
- 82A-210.1. Montana state game wardens' retirement board.
- 82A-210.2. Montana judges' retirement board.
- 82A-212. Teachers' retirement board—composition—terms—allocated.
- 82A-214. Office of state treasurer transferred to department.
- 82A-215. "Department" substituted in other statutes.
- 82A-216. "Department of administration" substituted in other statutes.
- 82A-217. Name changes.
- 82A-218. Name changes.
- 82A-219. Name changes.
- 82A-220. Name changes.
- 82A-221. Name changes.
- 82A-222. Board of trustees abolished—functions transferred.
- 82A-223. Quasi-judicial functions transferred.

82A-201. Department of administration—creation—head. There is created a department of administration. The department head is a director of administration appointed by the governor in accordance with section 82A-106 of this act.

History: En. 82A-201 by Sec. 1, Ch. 272, L. 1971.

utive Reorganization Order 4-71, dated Aug. 20, 1971, effective Aug. 20, 1971, as amended by Executive Reorganization Order 6-72, dated Sept. 25, 1972.

Executive Implementation

This chapter was implemented by Exec-

82A-201.1. Functions of department. The department and its units are responsible for administering laws pertaining to the general administrative and fiscal functions of state government, including, but not limited to, laws pertaining to:

- (1) Highway patrolmen's retirement system (Title 31, chapter 2);
- (2) Federal social security (Title 59, chapter 11);
- (3) Public employees retirement system (Title 68, chapters 1 through 14);
- (4) Teachers' retirement system (Title 75, chapter 62);
- (5) State capitol repair and reconstruction (Title 78, chapter 7);
- (6) Insurance on state buildings (Title 78, chapter 11);
- (7) Deposit and investment of state funds (Title 79, chapter 3);
- (8) State budget (Title 79, chapter 10);
- (9) State general fund warrants (Title 79, chapter 11);
- (10) Unified investment plan (Title 79, chapter 12);
- (11) Refunding state bonds (Title 79, chapter 18);
- (12) Long range building program bonds (Title 79, chapter 22);
- (13) Administrative costs of agencies (Title 79, chapter 24);
- (14) Investments (Title 81, chapter 10);
- (15) Purchasing for state agencies (Title 82, chapter 19);
- (16) General administrative functions (Title 82, chapter 33);
- (17) Judges' retirement system (Title 93, chapter 11).

History: En. 82A-201.1 by Sec. 89, Ch. 326, L. 1974.

82A-202, 82A-203. Repealed.

Repeal

Sections 82A-202 and 82A-203 (Sec. 1, Ch. 272, L. 1971; Sec. 1, Ch. 211, L. 1973; Sec. 2, Ch. 250, L. 1973; Sec. 2, Ch. 42,

L. 1974), relating to the abolition of various agencies and the transfer of their functions, were repealed by Sec. 103, Ch. 326, Laws of 1974.

82A-204. Board of investments—allocation—composition—designation.

(1) There is a board of investments.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108. Personnel for the board shall be appointed by the department subject to the approval of the board.

(3) The board is composed of five (5) members, appointed by the governor as prescribed in section 82A-112, informed and experienced in the subject of investments.

(4) The board of investments has the sole authority to invest state funds. No other agency may invest state funds. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board shall (a) assist agencies with public money to determine if, when and how much surplus cash is available for investment; (b) determine the amount of surplus treasury cash to be invested; (c) determine the type of investment to be made, and (d) prepare the claim to pay for the investment. The board has the power to veto any investments made under its general supervision.

(5) The board is designated as a quasi-judicial board for the purposes of section 82A-112.

History: En. 82A-204 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 90, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "invest state funds" at the end of the first sentence of subsection (4) for "exercise

the investment functions transferred to it under section 82A-205 of this chapter"; deleted "All laws governing the exercise of the investment functions remain in effect" at the beginning of the third sentence of subsection (4); inserted the fourth sentence of subsection (4); and made minor changes in phraseology.

82A-205. Repealed.

Repeal

Section 82A-205 (Sec. 1, Ch. 272, L. 1971), relating to the transfer of invest-

ment functions to the board of investments, was repealed by Sec. 103, Ch. 326, Laws of 1974.

82A-206. Merit system council—allocated—composition. (1) There is a merit system council.

(2) The council is allocated to the department for administrative purposes only as prescribed in section 82A-108. However, the council may hire its own personnel, and section 82A-108(2)(d) does not apply.

(3) The council is composed of three (3) members, appointed by the governor for six (6) year overlapping terms. The governor shall appoint the members upon the recommendation of the agencies which participate in the joint merit system, and in accordance with federal requirements.

(4) Members shall be compensated and reimbursed as are members of advisory councils in section 82A-110(5).

History: En. 82A-206 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 91, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted subsection (1) for "The administratively created agency known as the merit system council is hereby created by law"; deleted former subsection (2) reading "The

council and its functions are continued"; redesignated the remaining subsections; deleted from the end of subsection (3) a sentence reading "The members of the council before the effective date of this chapter continue as members for the remainder of their terms; thereafter, members shall be appointed in accordance with this section"; and made minor changes in phraseology.

82A-207. Board of examiners—allocated. (1) There is a board of examiners.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.

History: En. 82A-207 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 92, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted subsection (1) for "The board of examiners, created in article VII, section 20 of the Montana constitution, is continued"; deleted a former subsection (3) which read: "(3) The board retains only the following functions:

"(a) Its functions relating to examin-

ing claims against the state, except salaries or compensation of officers fixed by law, as prescribed in article VII, section 20 of the Montana constitution.

"(b) Its functions relating to planning, financing, administration, and construction of state buildings in the long range building program, contained in Title 78, chapters 7 and 12; Title 79, chapter 22; and sections 82-1131, 82-3317, and 82-3319, R. C. M. 1947"; and made minor changes in phraseology.

82A-208. Repealed.

Repeal

Section 82A-208 (Sec. 1, Ch. 272, L. 1971), relating to the board of state pris-

on commissioners, was repealed by Sec. 103, Ch. 326, Laws of 1974.

82A-209. State depository board—allocated. (1) There is a state depository board.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

History: En. 82A-209 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 93, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted subsection (1) for "The state depository board, created in article XII, section 14 of the Montana constitution, is con-

tinued"; deleted subsection (3) which read "The functions of the board, except the investment functions contained in Title 79, chapter 3, R. C. M. 1947, transferred to the board of investments in section 82A-205 of this chapter, are continued in the board"; and made a minor change in phraseology.

82A-210. Board of administration—composition—terms—allocated. (1) There is a board of administration.

(2) The board consists of five (5) members appointed by the governor. The members are:

(a) Three (3) public employees who shall be members of a public retirement system. Not more than one (1) of these members may be an employee of the same department.

(b) Two (2) members at large.

(3) The term of office for each member is five (5) years.

(4) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

(5) Members of the board shall be paid their actual and necessary expenses and members of the board who are not members of the public retirement system shall be entitled, in addition to actual and necessary expenses, compensation as established for quasi-judicial board in section 82A-112(7).

History: En. 82A-210 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 190, L. 1974; amd. Sec. 94, Ch. 326, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 326, and once by Ch. 190.

Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Both 1974 amendments substituted subsection (1) for a former subsection reading "The board of administration, provided for in Title 68, chapter 5, R. C. M. 1947, is continued"; inserted subsections (2) and (3); redesignated former subsection (2) as subsection (4); deleted former subsection (3) which read "The functions of the board, including its functions as

the Montana state game wardens' retirement board and as the Montana judges' retirement board, except investment functions transferred to the board of investments in section 82A-205 of this chapter, are continued in the board"; and made minor changes in phraseology.

Chapter 190, Laws of 1974, added subdivision (5).

82A-210.1. Montana state game wardens' retirement board. There is a Montana state game wardens' retirement board. The board consists of the same five (5) members who compose the board of administration, provided for in section 82A-210.

History: En. Sec. 4, Ch. 130, L. 1963; Sec. 68-1404, R. C. M. 1947; amd. and redes. 82A-210.1 by Sec. 17, Ch. 326, L. 1974.

section; substituted "provided for in section 82A-210" at the end of the section for "of the public employees' retirement system"; and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment renumbered this

82A-210.2. Montana judges' retirement board. There is a Montana judges' retirement board. The board consists of the same five (5) members who compose the board of administration, provided for in section 82A-210.

History: En. Sec. 3, Ch. 289, L. 1967; Sec. 93-1109, R. C. M. 1947; amd. and redes. 82A-210.2 by Sec. 96, Ch. 326, L. 1974.

section; substituted "provided for in section 82A-210" at the end of the section for "of the public employees' retirement system"; and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment renumbered this

82A-211. Repealed.**Repeal**

Section 82A-211 (Sec. 1, Ch. 272, L. 1971), relating to the transfer of the quasi-judicial functions of the Montana

highway patrolmen's retirement board, was repealed by Sec. 103, Ch. 326, Laws of 1974.

82A-212. Teachers' retirement board—composition—terms—allocated.

(1) There is a teachers' retirement board.

(2) The board consists of five (5) members appointed by the governor. The members are:

(a) The superintendent of public instruction;

(b) Two (2) persons appointed from the teaching profession who are members of the retirement system;

(c) Two (2) persons appointed as representatives of the public.

(3) Each appointed member of the board shall serve a term of four (4) years. Each appointed member shall take and subscribe to the oath prescribed by section 3 of article III of the constitution of the state. The oath shall be filed in the office of the secretary of state.

(4) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.

History: En. 82A-212 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 95, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted subsection (1) for a subsection reading "The teachers' retirement board, provided for in Title 75, chapter 62 (sections 96 through 113, public schools recodifica-

tion laws of 1971), R. C. M. 1947, is continued"; inserted subsections (2) and (3); redesignated former subsection (2) as subsection (4); deleted former subsection (3) which read "The functions of the board, except the investment functions transferred to the board of investments in section 82A-205 of this chapter, are continued in the board"; and made minor changes in phraseology.

82A-213. Repealed.

Repeal

Section 82A-213 (Sec. 1, Ch. 272, L. 1971), relating to abolition of the data processing advisory committee and the

advisory council on building construction, was repealed by Sec. 103, Ch. 326, Laws of 1974.

82A-214. Office of state treasurer transferred to department. (1) The office of state treasurer is transferred to the department of administration for administrative purposes only as prescribed in section 82A-108, R. C. M. 1947, except:

(1) the state treasurer shall continue his fiscal duties as prescribed by law, and section 82A-108(2) (c) does not apply; and

(2) the state treasurer may hire his own personnel, and section 82A-108(2) (d) does not apply.

History: En. Sec. 1, Ch. 136, L. 1973.

Compiler's Notes

Section 1, Ch. 121, Laws of 1973, created a section 82A-217 abolishing the passenger tramway safety board and transferring its functions to the department of administra-

tion. However, the section was repealed by Sec. 58, Ch. 511, Laws of 1973.

Title of Act

An act transferring the office of state treasurer to the department of administration for administrative purposes only, to comply with article VI, section 7 of the 1972 Montana constitution.

82A-215. "Department" substituted in other statutes. Wherever the words "state building code council" or "council" appear in sections 69-2112, 69-2116, 69-2117, and 69-2124 the word "department" shall be substituted therefor.

History: En. 82A-215 by Sec. 11, Ch. 226, L. 1974.

82A-216. "Department of administration" substituted in other statutes. Wherever the words "state building code council" appear in sections 66-2416, 66-2802, 69-4117, 82-1202 and 82-1202.1 the words "department of administration" shall be substituted therefor.

History: En. 82A-216 by Sec. 12, Ch. 226, L. 1974.

Instructions to Publishers

Section 13 of Ch. 226, Laws of 1974 read "The publishers of the Revised Codes of Montana 1947, are directed, under the supervision of the supreme court of Montana, to make the substitutions enumerated in sections 11 [82A-215] and

12 [82A-216] of this act, when reprinting sections or portions of sections of the Revised Codes in either supplements to or replacement volumes for the Revised Codes."

Repealing Clause

Section 14 of Ch. 226, Laws 1974 read "Sections 69-2104, 69-2106, 69-2108, 69-2115, 69-2120 and 69-2121 are repealed."

82A-217. Name changes. Wherever the words "state budget director" or "budget director" appear in sections 43-1002, 43-1003, and 43-1006, the words "department of administration" are substituted therefor.

History: En. 82A-217 by Sec. 97, Ch. 326, L. 1974.

82A-218. Name changes. Wherever the words "state controller" or "controller" appear in sections 6-105, 6-107, 6-108, 10-1004, 16-2723, 43-218, 59-701, 59-701.1, 59-701.2, 59-1105, 75-6206, 78-302, 78-910, 78-1203, 79-101, 79-104, 79-202, 79-414, 79-415, 79-602, 79-2308, 82-1312, 82-1313, 82-1314, 82-3307, 82-3308, 82-3309, 82-3317, and 82-3319, the words "department of administration" are substituted therefor.

History: En. 82A-218 by Sec. 98, Ch. 326, L. 1974.

82A-219. Name changes. Wherever the words "state board of examiners" or "board of examiners" appear in sections 25-225 and 82-1804, the words "department of administration" are substituted therefor.

History: En. 82A-219 by Sec. 99, Ch. 326, L. 1974.

82A-220. Name changes. Wherever the words "state board of land commissioners" appear in sections 11-2313, 11-2314, 11-2326, 11-2329, 16-2029, 16-2043, 16-2046, 68-1405, the words "board of investments" are substituted therefor.

History: En. 82A-220 by Sec. 100, Ch. 326, L. 1974.

82A-221. Name changes. Wherever the words "state purchasing department," "purchasing department," or "state purchasing agent," appear in sections 6-501 and 82-1157, the words "department of administration" are substituted therefor.

History: En. 82A-221 by Sec. 101, Ch. 326, L. 1974.

placement volumes for the Revised Codes."

Instructions to Publishers

Section 102 of Ch. 326, Laws of 1974 read "The publishers of the Revised Codes of Montana, 1947, are directed, under the supervision of the supreme court of Montana, to make the substitutions enumerated in sections 97, 98, 99, 100, and 101 of this act, when reprinting sections or portions of sections of the Revised Codes in either supplements to or re-

Repealing Clause

Section 103 of Ch. 326, Laws 1974 read "Sections 25-504, 31-202, 31-203, 60-301 through 60-306, 68-1403, 75-6203, 79-2401 through 79-2408, 81-1009 through 81-1014, 82-106 through 82-108, 82-602, 82-902, 82-1106, 82-1901, 82-3301 through 82-3305, 82-3322 through 82-3324, 82-3327, 82-3328, 82A-202, 82A-203, 82A-205, 82A-208, 82A-211, 82A-213, 93-1108, are repealed."

82A-222. Board of trustees abolished—functions transferred. The boards of trustees of police reserve funds in cities of the first and second class, created under section 11-1828, R. C. M. 1947, and other sections of chapter 18, Title 11, R. C. M. 1947, are hereby abolished, and their functions, except the quasi-judicial functions transferred to the board of retirement by section 3 [82A-223] of this act, are transferred to the department of administration. Those boards of trustees created and existing as of the effective date of this act within cities other than those of the first and

second class under the provisions of section 11-1824, R. C. M. 1947, are abolished as of such time as such city shall elect to come within the provisions of the within act, and, at such time, the functions of such board of the electing city, except the quasi-judicial functions transferred to the board of retirement by section 3 [82A-223] of this act, are transferred to the department of administration. Notwithstanding the provisions of section 11-1824, R. C. M. 1947, any city other than one in the first and second class electing after the effective date of this act to create a police reserve fund, shall comply with the provisions of this act, and shall not create a local board of trustees, and the department of administration shall have all functions with regard to such fund as otherwise a local board of trustees would have, other than the quasi-judicial functions, which shall be exercised by the board of retirement.

History: En. 82A-222 by Sec. 2, Ch. 335, L. 1974.

Effective Date

Section 22 of Ch. 335, Laws 1974 provided the act should be effective July 1, 1975.

82A-223. Quasi-judicial functions transferred. The quasi-judicial functions of:

(1) boards of trustees of police reserve funds of cities of the first and second class;

(2) boards of trustees of police reserve funds of cities other than those of the first and second class, presently having boards of trustees of police reserve funds pursuant to section 11-1824, R. C. M. 1947, and electing to come within the provisions of this act; and

(3) boards of trustees which would, but for this act, have been created hereafter by cities other than those of the first and second class under the provisions of section 11-1824, R. C. M. 1947, are transferred or shall originally exist, as the case may be, to or in the board of retirement created by section 82A-215, [sic] R. C. M. 1947, as amended.

History: En. 82A-223 by Sec. 3, Ch. 335, L. 1974.

Effective Date

Section 22 of Ch. 335, Laws 1974 provided the act should be effective July 1, 1975.

CHAPTER 3—DEPARTMENT OF AGRICULTURE

Section

82A-301. Department of agriculture—creation—head.

82A-301.1. Functions of department.

82A-304. Montana wheat research and marketing committee—composition—qualification—term—allocation.

82A-304.1. Board of hail insurance transferred to department.

82A-301. Department of agriculture—creation—head. There is a department of agriculture. The department head is a director of agriculture appointed by the governor in accordance with section 82A-106.

History: En. 82A-301 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 141, Ch. 218, L. 1974.

Amendments

The 1974 amendment substituted the present section for a section relating to creation of the department and appoint-

ment of a commissioner of agriculture under article XVIII, section 1 of the Montana constitution.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 10-71, dated Dec. 9, 1971, effective Dec. 9, 1971.

82A-301.1. Functions of department. The department and its units are responsible for administering laws pertaining to agriculture, including, but not limited to:

- (1) Regulation of grain (Title 3, chapter 2);
- (2) Seed warehousemen (Title 3, chapter 3);
- (3) Bean warehousemen (Title 3, chapter 7);
- (4) Agricultural seeds (Title 3, chapter 8);
- (5) Barberry control (Title 3, chapter 10);
- (6) Horticulture (Title 3, chapter 11);
- (7) Nurseries and nurserymen (Title 3, chapter 12);
- (8) Orchards (Title 3, chapter 13);
- (9) Standard grades and brands (Title 3, chapter 14);
- (10) Commercial fertilizer (Title 3, chapter 17);
- (11) Mustard seed (Title 3, chapter 19);
- (12) Commercial feeds (Title 3, chapter 20);
- (13) Rural rehabilitation (Title 3, chapter 28);
- (14) Wheat research and marketing (Title 3, chapter 29);
- (15) Agricultural marketing (Title 3, chapter 30);
- (16) Apiculture (Title 3, chapter 31);
- (17) Itinerant merchants (Title 3, chapter 32);
- (18) Produce wholesalers (Title 3, chapter 33);
- (19) Apples, grades, and boxes (Title 3, chapter 34);
- (20) Pesticides (Title 27, chapter 2).

History: En. 82A-301.1 by Sec. 142, Ch. 218, L. 1974.

82A-302, 82A-303. Repealed.

Repeal

Sections 82A-302 and 82A-303 (Sec. 1, Ch. 272, L. 1971), relating to abolition of

various agencies and transfer of their functions, were repealed by Sec. 173, Ch. 218, Laws of 1974.

82A-304. Montana wheat research and marketing committee—composition—qualification—term—allocation. (1) There is a Montana wheat research and marketing committee.

(2) (a) The committee consists of seven (7) members and three (3) ex officio, nonvoting members.

(b) The governor shall appoint one member from each of the following districts:

- (i) District I, consisting of Daniels, Sheridan, and Roosevelt counties;
- (ii) District II, consisting of Valley, Phillips, Blaine, and Hill counties;
- (iii) District III, consisting of Liberty, Toole, Glacier, and Pondera counties;

- (iv) District IV, consisting of Chouteau and Teton counties;
- (v) District V, consisting of Lewis and Clark, Cascade, Judith Basin, Fergus, Petroleum, Meagher, Broadwater, Wheatland, Golden Valley, and Musselshell counties;
- (vi) District VI, consisting of Big Horn, Yellowstone, Stillwater, Carbon, Sweet Grass, Park, Gallatin, Madison, Jefferson, Silver Bow, Beaverhead, and all counties west of the continental divide;
- (vii) District VII, consisting of Garfield, McCone, Rosebud, Richland, Dawson, Wibaux, Prairie, Carter, Custer, Fallon, Powder River, and Treasure counties.

(c) The ex officio members are:

- (i) The director of the department of agriculture;
- (ii) The dean of agriculture of Montana state university;
- (iii) A representative of the grain trade in Montana elected by a majority of the appointed members.

(d) Each of the appointed members shall be a citizen of Montana, derive a substantial portion of his income from growing wheat in this state, and be a resident of and have farming operations in the district from which appointed. No more than four (4) of the appointed members may be of the same political party.

(e) A list of nominees for appointment may be submitted to the governor by the Montana farmers union, Montana farm bureau, Montana grange, and the Montana grain growers association. Names of nominees shall be submitted within ninety-one (91) days before the expiration of a committeeman's term.

(3) (a) The appointed members shall serve staggered terms of five (5) years. The ex officio representative of the grain trade shall serve at the pleasure of the committee.

(b) A member may be removed by the governor, after a full public hearing before the governor, for malfeasance, misfeasance, or neglect of duty. Removal proceedings may not be started except upon duly verified written charges. The members shall be given a copy of the written charges at least ten (10) days in advance of the hearing. At the hearing, the member may be represented by an attorney and may present witnesses in his behalf.

(c) A member who ceases to reside in the state or in the district from which he was appointed, or who ceases to grow wheat in the state or district, is disqualified from membership and his office becomes vacant. If the member refuses to recognize his disqualification, the refusal is cause for removal.

(4) The committee is allocated to the department for administrative purposes only as prescribed in section 82A-108.

History: En. 82A-304 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 143, Ch. 218, L. 1974.

Amendments

The 1974 amendment rewrote this sec-

tion which had provided for the transfer of the Montana wheat research and marketing committee to the department of agriculture for administrative purposes, and for the continuation of its functions as previously prescribed by law.

82A-304.1. Board of hail insurance transferred to department. The state board of hail insurance created in Title 82, chapter 15, and transferred under section 82A-2103 to the state auditor, is transferred to the department of agriculture, for administrative purposes only.

History: En. Sec. 1, Ch. 395, L. 1973.

istrative purposes only; and repealing section 82A-2103, R. C. M. 1947.

Title of Act

An act transferring the state board of hail insurance from the state auditor to the department of agriculture for admin-

Repealing Clause

Section 2 of Ch. 395, Laws 1973 read "Section 82A-2103, R. C. M. 1947, is repealed."

82A-305. Repealed.

Repeal

Section 82A-305 (Sec. 1, Ch. 272, L. 1971), relating to abolition of the agricultural marketing advisory body, the poultry advisory board, the state mos-

quito control advisory committee, the agriculture and livestock council, and the Montana wool laboratory advisory committee, was repealed by Sec. 173, Ch. 218, Laws of 1974.

CHAPTER 4—DEPARTMENT OF BUSINESS REGULATION

Section

- 82A-401. Department of business regulation—creation—head.
- 82A-402. Agencies abolished—functions transferred to department.
- 82A-403. Additional functions transferred to department.
- 82A-404. Board of trade abolished—functions transferred.
- 82A-406. Milk control board—continued—renamed board of milk control—transfer—functions—designation.

82A-401. Department of business regulation—creation—head. There is created a department of business regulation. The department head is the state examiner provided for in article VII, section 8 of the Montana constitution. He shall serve at the pleasure of the governor.

History: En. 82A-401 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 7-71, dated Nov. 11, 1971, effective Nov. 15, 1971.

82A-402. Agencies abolished—functions transferred to department.

(1) The state banking department of the state of Montana and the position of superintendent of banks, provided for in Title 5, chapter 6, R. C. M. 1947, are abolished, and their functions are transferred to the department of business regulation. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the superintendent of banks or the state banking department means the department of business regulation.

(2) The office of consumer loan commissioner, created in Title 47, chapter 2, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the consumer loan commissioner means the department of business regulation.

(3) The position of state sealer of weights and measures and the division of weights and measures, created in Title 90, chapter 1, R. C. M. 1947, are abolished, and their functions are transferred to the department.

Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state sealer or to the division of weights and measures means the department of business regulation.

History: En. 82A-402 by Sec. 1, Ch. 272, L. 1971.

82A-403. Additional functions transferred to department. (1) The functions of the state examiner, except the functions with respect to the political subdivisions of the state and their officers and employees transferred to the department of intergovernmental relations and enumerated in chapter 9 of this act, are transferred to the department. In accordance with article VII, section 8 of the Montana constitution, the state examiner retains the function of examining the accounts of the state treasurer, supreme court clerks, district court clerks, and county treasurers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state examiner, except the references contained in the citations enumerated above in this subsection, means the department of business regulation.

(2) The functions of the Montana milk control board, which is created in Title 27, chapter 4, R. C. M. 1947, except the quasi-judicial functions contained in section 27-407, R. C. M. 1947 (pertaining to fixing minimum prices for milk), retained in the board under section 82A-406 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana milk control board, except the references in section 27-407, R. C. M. 1947, relating to the quasi-judicial functions retained in the board under section 82A-406 of this chapter, means the department of business regulation.

(3) The functions of the commissioner of agriculture, which are contained in Title 60, chapter 2, R. C. M. 1947 (pertaining to petroleum products regulation), are transferred to the department. Unless inconsistent with this act, any reference in Title 60, chapter 2, R. C. M. 1947, to the commissioner of agriculture means the department of business regulation.

(4) The functions of the department of agriculture, which are contained in Title 90, chapter 1, R. C. M. 1947 (pertaining to weights and measures), are transferred to the department of business regulation. Unless inconsistent with this act, any reference in Title 90, chapter 1, R. C. M. 1947, to the department of agriculture means the department of business regulation.

History: En. 82A-403 by Sec. 1, Ch. 272, L. 1971.

82A-404. Board of trade abolished—functions transferred. (1) The board of trade, provided for in Title 27, chapter 3, is abolished and its functions in Title 51, chapter 1 (pertaining to the Unfair Practices Act) are transferred to the department of business regulation. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of food distributors or the board of trade means the department of business regulation.

History: En. 82A-404 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 256, L. 1973.

Amendments

The 1973 amendment abolished the board of trade, formerly the board of food distributors; transferred its functions to the department of business regulation; and deleted former subsections (2) and (3), relating to the administration and functions of the board.

Repealing Clause

Section 2 of Ch. 256, Laws 1973 read "Sections 27-301 through 27-317, sections 70-201 through 70-233 and 82A-405, R. C. M. 1947, are repealed."

Effective Date

Section 3 of Ch. 256, Laws 1973 read "This act is effective June 30, 1973."

82A-405. Repealed.

Repeal

Section 82A-405 (Sec. 1, Ch. 272, L. 1971), abolishing the Montana trade com-

mission and transferring its functions to the board of trade, was repealed by Sec. 2, Ch. 256, Laws 1973.

82A-406. Milk control board—continued—renamed board of milk control—transfer—functions—designation. (1) The Montana milk control board, created in Title 27, chapter 4, R. C. M. 1947, is continued, and the board is renamed the board of milk control.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board retains only the quasi-judicial functions contained in section 27-407, R. C. M. 1947 (pertaining to setting milk prices). Unless inconsistent with this act, any reference in section 27-407, R. C. M. 1947, to the Montana milk control board means the board of milk control.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

History: En. 82A-406 by Sec. 1, Ch. 272, L. 1971.

CHAPTER 5—STATE BOARD OF EDUCATION

- Section
 82A-501. State board of education.
 82A-501.1. Allocation to the state board of education.
 82A-501.2. Intent of act.
 82A-502. Agencies abolished—functions transferred to co-operative extension service.
 82A-507. Board of trustees of state historical society—continued.
 82A-508. Montana arts council.
 82A-509. State library commission—continued.
 82A-511. Educational broadcasting commission—appointment—terms—allocation.
 82A-512. Commission on federal higher education programs—creation—appointment—terms.
 82A-513. Advisory committee—appointment—qualifications—term.

82A-501. State board of education. The state board of education is created in article X, section 9, subsection (1) of the Montana constitution and is provided for in Title 75, chapter 56, R. C. M. 1947.

History: En. 82A-501 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 4, Ch. 51, L. 1974.

Amendments

The 1974 amendment substituted the present section for one reading "There is created a department of education. The

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department head is the state board of education, created in article XI, section 11 of the Montana constitution and provided for in Title 75, R. C. M. 1947."

Executive Implementation

This chapter was implemented by Executive Reorganization Order 5-72, dated Sept. 15, 1972, effective Sept. 15, 1972.

82A-501.1. Allocation to the state board of education. The state historical society, the Montana arts council, and the state library commission are allocated to the state board of education for purposes of planning and co-ordination. Budget requests to the state for these agencies shall be included with the budget requests of the state board of education; however, the governance, management, and control of the respective agencies shall be vested respectively in the board of trustees of the state historical society, in the Montana arts council, and in the state library commission.

History: En. 82A-501.1 by Sec. 5, Ch. 51, L. 1974.

Title of Act

An act deleting reference to a department of education in Title 82A and inserting in lieu thereof reference to the state board of education; re-establishing the governance authority for the state

historical society, the Montana arts council and the state library commission and providing for their relationship to the state board of education; amending sections 82A-104, 82A-110, 82A-501, 82A-502, 82A-507, 82A-508, 82A-509, 82-3603 and 82-3605; and repealing sections 82A-503, 82A-504, 82A-505, 82A-506 and 82A-510, R. C. M. 1947.

82A-501.2. Intent of act. It is the intent of this act to comply with the spirit of executive reorganization and yet to acknowledge that departmentalization as set forth in the Executive Reorganization Act of 1971 is incompatible with the constitutional and statutory structure for governance of Montana's educational and cultural entities.

History: En. Sec. 1, Ch. 51, L. 1974.

82A-502. Agencies abolished—functions transferred to co-operative extension service. (1) The position of state entomologist of Montana, provided for in Title 82, chapter 8, R. C. M. 1947, is abolished, and the functions of the position are transferred to the co-operative extension service. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state entomologist means the co-operative extension service.

(2) The position of state apiarist, provided for in Title 82, chapter 8, R. C. M. 1947, is abolished, and the functions of the office, except the functions contained in section 82-806, subsections 1 through 4, and section 82-807(11), R. C. M. 1947 (pertaining to enforcing the apiary laws), transferred to the department of agriculture in chapter 3 of this act, are transferred to the co-operative extension service. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state apiarist, except the references in section 82-806, subsections 1 through 4, and section 82-807(11), R. C. M. 1947, means the co-operative extension service.

History: En. 82A-502 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 6, Ch. 51, L. 1974.

the department" or "within the department of education" after "extension service" throughout the section.

Amendments

The 1974 amendment deleted "within

82A-503 to 82A-506. Repealed.**Repeal**

Sections 82A-503 to 82A-506 (En. 82A-503 to 82A-506 by Sec. 1, Ch. 272, L. 1971), relating to transfer of the histori-

cal society and board of trustees and continuation of the director, were repealed by Sec. 12, Ch. 51, Laws 1974.

82A-507. Board of trustees of state historical society—continued. (1)

The board of trustees of the state historical society, created in Title 44, chapter 5, R. C. M. 1947, is continued.

(2) The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of board members remain as prescribed by law.

History: En. 82A-507 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 7, Ch. 51, L. 1974.

Amendments

The 1974 amendment substituted the present subdivision (2) for one reading "The board consists of fifteen (15) members, appointed by the governor to serve at his pleasure. Members of the board before the effective date of this chapter serve for the remainder of their terms; thereafter, members shall be appointed and serve in accordance with this sub-

section. The qualifications for board members in section 44-520, R. C. M. 1947, apply. The board may organize itself in accordance with section 44-523(1), R. C. M. 1947. Members shall be compensated and reimbursed as are members of advisory councils in section 82A-110(5) of this act"; and deleted subdivision (3) which read "The board shall only act in an advisory capacity to the state board of education and the director of the state historical society on matters relating to the functions of the director."

82A-508. Montana arts council. (1) The Montana arts council, created in Title 82, chapter 36, R. C. M. 1947, and its functions are continued.

(2) The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of council members remain as prescribed by law.

History: En. 82A-508 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 8, Ch. 51, L. 1974.

Amendments

The 1974 amendment deleted a subdivision which read: "The council is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act"; deleted a sentence in subdivision (3) which read:

"Members of the council before the effective date of this chapter serve for the remainder of their terms"; inserted "council" before "members" near the end of the subdivision (2); deleted a subdivision which read: "The director of the council shall be appointed and may be removed by the council, subject to the approval of the board of education"; and made minor changes in phraseology and punctuation.

82A-509. State library commission—continued. (1) The state library commission, created in Title 44, chapter 1, R. C. M. 1947, and its functions are continued.

(2) The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of commission members remain as prescribed by law.

History: En. 82A-509 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 51, L. 1974.

Amendments

The 1974 amendment deleted a subdivision which read: "The council is transferred to the department for ad-

ministrative purposes only as prescribed in section 82A-108 of this act"; deleted a sentence in subdivision (3) which read: "Members of the commission before the effective date of this chapter serve for the remainder of their terms"; deleted a subdivision which read: "The state librarian shall be appointed and may be

removed by the commission, subject to the approval of the board of education"; and made minor changes in phraseology and punctuation.

82A-510. Repealed.

Repeal

Section 82A-510 (En. 82A-510 by Sec. 1, Ch. 272, L. 1971), relating to abolition of the advisory council on teacher educa-

tion and certification and the council on education for the disadvantaged, was repealed by Sec. 12, Ch. 51, Laws of 1974.

82A-511. Educational broadcasting commission—appointment—terms—allocation. (1) There is an educational broadcasting commission.

(2) The commission consists of:

- (a) the superintendent of public instruction or his designee;
- (b) the commissioner of higher education or his designee;
- (c) the director of administration or his designee;

(d) five (5) residents of the state appointed by the governor from separate lists of ten (10) nominees provided by the board of public education and by the board of regents of higher education. No more than three (3) appointed members may be from a single United States congressional district.

(3) Each appointed member shall serve for a term of five (5) years. Of the first members appointed, the governor shall determine the terms so that one (1) term shall expire every year.

(4) The commission is allocated to the state board of education for administrative purposes only as prescribed in section 82A-108 except that section 82A-108(2)(d) does not apply and the commission may hire its own personnel.

History: En. 82A-511 by Sec. 8, Ch. 215, L. 1974.

5711, R. C. M. 1947; and providing for an effective date.

Title of Act

An act establishing an educational broadcasting commission; prescribing its powers and duties; amending section 82-3325; repealing sections 75-5710 and 75-

Effective Date

Section 8 of Ch. 215, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 14, 1974.

82A-512. Commission on federal higher education programs—creation—appointment—terms. (1) There is a commission on federal higher education programs.

(2) The commission consists of:

(a) ex officio, the appointed members of the board of regents of higher education; and

(b) a representative of each accredited private college or university in this state appointed by the governor from the board of trustees of each private college or university. Membership on the commission by these representatives is contingent upon their continued status as trustees.

(3) The non-ex officio members shall serve for terms as provided in section 82A-112(2)(a).

(4) The chairman of the board of regents of higher education is chairman of the commission.

(5) The commissioner of higher education is the administrative officer of the commission.

(6) The commission is allocated to the board of regents of higher education for administrative purposes only as provided in section 82A-108.

(7) The commission members are entitled to compensation as provided in section 82A-112(7).

History: En. 82A-512 by Sec. 3, Ch. 220, L. 1974.

and after its passage and approval. Approved March 15, 1974.

Effective Date

Section 5 of Ch. 220, Laws 1974 provided the act should be in effect from

Cross-References

Commission on federal higher education programs, see secs. 75-9301 to 75-9303.

82A-513. Advisory committee—appointment—qualifications—term. (1) There is a fertilizer advisory committee.

(2) The committee consists of five (5) members. The members shall represent the fertilizer users of the state. The members shall be appointed by the dean of agriculture of Montana state university with the approval of the chairman of the Montana house of representatives agriculture and irrigation committee, the chairman of the Montana senate agriculture committee, the chairman of the Montana plant food association or its successor organization, the director of the co-operative extension service, and the director of the Montana agricultural experiment station.

(3) The members shall serve staggered five (5) year terms. A member may not serve more than seven (7) consecutive years.

History: En. Sec. 4, Ch. 397, L. 1971; Sec. 3-1732, R. C. M. 1947; amd. and redes. 82A-513 by Sec. 99, Ch. 218, L. 1974.

section; inserted subsection (1) and the first sentence of subsection (2); substituted "station" for "section" at the end of subsection (2); added subsection (3); and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment renumbered this

CHAPTER 6—DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Section

- 82A-601. Department of health and environmental sciences—head.
- 82A-601.1. Functions of department.
- 82A-604. Division of environmental sciences—creation.
- 82A-605. State board of health—continued—renamed—designation.
- 82A-606. Air pollution control advisory council—appointment—qualifications—term.
- 82A-607. Water pollution control advisory council—appointment—qualifications—term.
- 82A-608. Director of health and environmental sciences—qualifications.
- 82A-610. Sanitarian advisory council abolished.
- 82A-612. Board of water and waste water operators—appointment—qualifications—term.
- 82A-613. Name changes.
- 82A-614. Name changes.
- 82A-615. Name changes.
- 82A-616. Name changes.
- 82A-617. Name changes.
- 82A-618. Name changes.
- 82A-619. Name changes.
- 82A-620. Name changes.

82A-601. Department of health and environmental sciences—head. There is a department of health and environmental sciences. The depart-

82A-601.1 REORGANIZATION OF EXECUTIVE DEPARTMENT

ment head is the director of health and environmental sciences appointed by the governor in accordance with section 82A-106, and in addition shall have the qualifications required in section 82A-608.

History: En. 82A-601 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 95, Ch. 349, L. 1974. for in section 82A-608 of this chapter"; and made a minor change in phraseology.

Amendments

The 1974 amendment substituted "appointed by the governor * * * 82A-608" at the end of the section for "provided

Executive Implementation

This chapter was implemented by Executive Reorganization Order 9-71, dated Nov. 26, 1971, effective Nov. 29, 1971.

82A-601.1. Functions of department. The department and its units have responsibility for the administration of laws relating to public health, including, but not limited to, laws on:

- (1) Food services (Title 27, chapter 6);
- (2) Foods, drugs, and cosmetics (Title 27, chapter 7);
- (3) Flour and bread (Title 27, chapter 8);
- (4) Lodging establishments (Title 34, chapter 3);
- (5) Sanitarians (Title 69, chapter 34);
- (6) Ambulance services (Title 69, chapter 36);
- (7) Air pollution (Title 69, chapter 39);
- (8) Refuse disposal areas (Title 69, chapter 40);
- (9) Industrial hygiene (Title 69, chapter 42);
- (10) Tuberculosis control (Title 69, chapter 43);
- (11) Vital statistics (Title 69, chapter 44);
- (12) Local boards of health (Title 69, chapter 45);
- (13) Venereal disease control (Title 69, chapter 46);
- (14) Shoddy control (Title 69, chapter 47);
- (15) Water pollution (Title 69, chapter 48);
- (16) Public water supplies (Title 69, chapter 49);
- (17) Subdivisions (Title 69, chapter 50);
- (18) Cadavers (Title 69, chapter 51);
- (19) Hospitals and related facilities (Title 69, chapter 52);
- (20) Hospital survey and construction (Title 69, chapter 53);
- (21) Cesspools, septic tanks, and privies, etc. (Title 69, chapter 54);
- (22) Public swimming pools and bathing places (Title 69, chapter 55);
- (23) Tourist campgrounds (Title 69, chapter 56);
- (24) Control of ionizing radiation (Title 69, chapter 58);
- (25) Water treatment plants and distribution systems (Title 69, chapter 59);
- (26) Refuse disposal districts (Title 69, chapter 60);
- (27) Alcohol and drug dependence (Title 69, chapter 62).

History: En. 82A-601.1 by Sec. 96, Ch. 349, L. 1974.

82A-602, 82A-603. Repealed.

Repeal

Sections 82A-602 and 82A-603 (Sec. 1, Ch. 272, L. 1971), relating to abolition of

various agencies and transfer of functions, were repealed by Sec. 113, Ch. 349, Laws of 1974.

82A-604. Division of environmental sciences—creation. There is a division of environmental sciences within the department. The department shall assign all functions performed by the department relating to air pollution control, water pollution control, radiation control, pesticides control, environmental sanitation, solid waste disposal, industrial hygiene, and related areas to the division.

History: En. 82A-604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 97, Ch. 349, L. 1974.

department" at the beginning of the second sentence for "The board of health and environmental sciences"; and made a minor change in phraseology.

Amendments

The 1974 amendment substituted "The

82A-605. State board of health—continued—renamed—designation. (1) The state board of health provided for in Title 69, chapter 41, R. C. M. 1947, is continued and renamed the board of health and environmental sciences.

(2) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

History: En. 82A-605 by Sec. 1, Ch. 272, L. 1971.

82A-606. Air pollution control advisory council—appointment—qualifications—term. (1) There is an air pollution control advisory council.

(2) The council consists of ten (10) members appointed by the governor, with the consent of the senate, as follows: a representative of labor; a representative of agriculture; a representative of the manufacturing industry; a representative of the fuel industry; a practicing physician licensed in this state; a practicing veterinarian licensed in this state; a practicing registered professional chemical or environmental engineer; a meteorologist; a conservationist; and an urban planning consultant.

(3) The appointed members shall serve at the pleasure of the governor.

(4) Subsections (5) through (8) of section 82A-110 apply to the council and members.

History: En. 82A-606 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 98, Ch. 349, L. 1974.

officer of the state board of health is replaced by the director of the department of health and environmental sciences"; deleted "After the effective date of this chapter" from the beginning of subsection (3); deleted former subsection (4) reading "The council shall act in an advisory capacity to the department of health and environmental sciences on matters relating to air pollution"; redesignated former subsection (5) as subsection (4); and made minor changes in phraseology.

Amendments

The 1974 amendment substituted subsection (1) for "The air pollution control advisory council created in Title 69, chapter 39, R. C. M. 1947, is continued"; substituted subsection (2) for a subsection reading "Council membership remains as prescribed in section 69-3908, R. C. M. 1947, except that the executive

82A-607. Water pollution control advisory council—appointment—qualifications—term. (1) There is a water pollution control advisory council.

(2) The council consists of eleven (11) members. The members are:

(a) The director of fish and game;

(b) The administrator of the water resources division of the department of natural resources and conservation;

(c) The director of agriculture;

(d) Eight (8) members appointed by the governor as follows: a representative of industry concerned with the disposal of inorganic waste; a representative of industry concerned with the disposal of organic waste; a livestock feeder; a representative of municipal government; a representative of an organization concerned with fishing for sport; a representative from labor; a supervisor of a soil and water conservation district; a representative of an organization concerned with water recreation.

(3) The appointed council members serve at the pleasure of the governor.

(4) Subsections (5) through (8) of section 82A-110 apply to the council and members.

History: En. 82A-607 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 99, Ch. 349, L. 1974.

Amendments

The 1974 amendment rewrote this section. Prior to amendment it read: "(1) The state water pollution control council, created in Title 69, chapter 48, R. C. M. 1947, is continued and renamed the water pollution control advisory council. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state water pollution control council means the water pollution control advisory council.

"(2) Council membership remains as prescribed in section 69-4810, R. C. M. 1947, except that the executive officer of the state department of health, the state

fish and game department director, and the director of the water resources board are replaced by the director of the department of health and environmental sciences, the director of the fish and game department, and the administrator of the water resources division of the department of natural resources and conservation, respectively.

"(3) After the effective date of this chapter, appointed council members serve at the pleasure of the governor.

"(4) The council shall only act in an advisory capacity to the department of health and environmental sciences on matters relating to water pollution.

"(5) Subsections (5) through (8) of section 82A-110 of this act shall apply to the council and members."

82A-608. Director of health and environmental sciences—qualifications.

The director of health and environmental sciences shall:

(1) Have a degree of doctor of medicine.

(2) Have successfully completed at least one (1) year of graduate study in an approved school of public health.

(3) Have had at least two (2) years' experience as a full-time public health officer.

(4) Be eligible for a license by the board of medical doctors.

(5) Receive a license from the board of medical doctors not later than six (6) months after his appointment.

History: En. 82A-608 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 100, Ch. 349, L. 1974.

Amendments

The 1974 amendment inserted the introductory phrase; deleted a subsection which read: "There is created the position of director of health and environmental sciences. The director shall be ap-

pointed by the governor in the manner set forth in section 82A-106 of this act for directors who are department heads, and in addition shall"; inserted the present preliminary clause; substituted "medical doctors" in subdivisions (4) and (5) for "medical examiners"; deleted a subsection which read: "Section 82A-107 of this act applies to the director as a department head, subject to the concur-

rence of the board of health and environmental sciences. The director is the chief administrative officer of the department, and he shall in addition perform those

functions that are delegated to him by the board of health and environmental sciences"; and made minor changes in phraseology, punctuation and style.

82A-609. Repealed.

Repeal

Section 82A-609 (Sec. 1, Ch. 273, L. 1971), relating to abolition of additional

agencies, was repealed by Sec. 113, Ch. 349, Laws of 1974.

82A-610. Sanitarian advisory council abolished. The sanitarian advisory council, created in section 69-3402, R. C. M. 1947, is abolished.

History: En. Sec. 1, Ch. 78, L. 1973.

Title of Act

An act abolishing the sanitarian advisory council.

82A-612. Board of water and waste water operators—appointment—qualifications—term. (1) There is a board of water and waste water operators.

(2) The board consists of seven (7) members. Except as provided in subsection (2)(e) of this section, the members shall be appointed by the governor. The members are:

(a) Two (2) members who are employed water supply system or water treatment plant operators holding valid certificates. One (1) of these members shall hold a certificate by examination of the highest class issued by the department of health and environmental sciences. There is no restriction on the classification of the certificate held by the other operator;

(b) Two (2) members who are employed waste water treatment plant operators holding valid certificates. One (1) of these members shall hold a certificate by examination of the highest class issued by the department of health and environmental sciences. There is no restriction on the classification of the certificate held by the other operator;

(c) One (1) member serving on the faculty of a university or college whose major field is related to water supply systems, waste water treatment, chemical or civil engineering, chemistry, or bacteriology;

(d) One (1) member who is a representative of a municipality required to employ a certified operator and who holds a position of either city manager, city engineer, director of public works, works manager, or their equivalent;

(e) The administrator of the division of environmental sciences of the department of health and environmental sciences or a qualified member of his staff appointed by the administrator.

(3) Members, except the ex officio voting member from the department of health and environmental sciences, shall serve for a term of six (6) years.

(4) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

History: En. 82A-612 by Sec. 101, Ch. 349, L. 1974.

82A-613. Name changes. Wherever the words "state board of health," "board," "board of health," or "Montana state board of health" appear in sections 48-135, 48-140, 69-4303, 69-4402, 69-4702, 69-5503, 69-5602, 69-5803, and 95-802, the words "department of health and environmental sciences" are substituted therefor.

History: En. 82A-613 by Sec. 104, Ch.
349, L. 1974.

82A-614. Name changes. Wherever the words "state department of health," or "bureau of vital statistics, state board of health" appear in sections 69-5102, 69-5203, 69-5401, and 93-101-4, the words "department of health and environmental sciences" are substituted therefor.

History: En. 82A-614 by Sec. 105, Ch.
349, L. 1974.

82A-615. Name changes. Wherever the words "state board of health" appear in sections 11-2412, 15-2304, and 16-1037, the words "department of health and environmental sciences" are substituted therefor.

History: En. 82A-615 by Sec. 106, Ch.
349, L. 1974.

82A-616. Name changes. Wherever the words "state board," "board," or "state board of health" or "board of health" appear in sections 27-613, 27-615, 27-620, 27-621, 27-625, 27-709, 27-711, 27-713, 27-715, 27-716, 27-717, 27-719, 27-720, 27-802, 27-805, 34-307, 69-3403, 69-3404, 69-3609, 69-4306, 69-4403, 69-4407, 69-4410, 69-4411, 69-4412, 69-4413, 69-4414, 69-4416, 69-4425, 69-4431, 69-4616, 69-4617, 69-4703, 69-4704, 69-4705, 69-4706, 69-5205, 69-5207, 69-5208, 69-5212, 69-5217, 69-5219, 69-5304, 69-5306, 69-5308, 69-5310, 69-5311, 69-5401, 69-5402, 69-5406, 69-5407, 69-5505, 69-5510, 69-5511, 69-5603, 69-5806, 69-5807, 69-5808, 69-5809, 69-5810, 69-5813, 69-5814, and 69-5816, the word "department" is substituted therefor.

History: En. 82A-616 by Sec. 107, Ch.
349, L. 1974.

82A-617. Name changes. Wherever the words "state board" appear in sections 69-4118, 69-4509, 69-4511, and 69-4519, the word "department" is substituted therefor.

History: En. 82A-617 by Sec. 108, Ch.
349, L. 1974.

82A-618. Name changes. Wherever the words "department of health," or "state department of health" appear in sections 69-4004, 69-4005, 69-4007, 69-4009, 69-4110.1, 69-4403, 69-4610, 69-4705, 69-5402, 69-5403, 69-5504, 69-5506, 69-5507, 69-5508, and 69-5603, the word "department" is substituted therefor.

History: En. 82A-618 by Sec. 109, Ch.
349, L. 1974.

82A-619. Name changes. Wherever the words "state registrar" appear in sections 69-4406, 69-4410, 69-4411, 69-4417, 69-4418, 69-4423, 69-4431, 69-

4432, 69-4433, 69-4434, and 69-4435, the word "department" is substituted therefor.

History: En. 82A-619 by Sec. 110, Ch. 349, L. 1974.

82A-620. Name changes. Wherever the words "executive officer," or "director" appear in sections 27-615, 69-4509, 69-5311, 69-5904, and 69-5905, the word "department" is substituted therefor.

History: En. 82A-620 by Sec. 111, Ch. 349, L. 1974.

Instructions to Publishers

Section 112 of Ch. 349, Laws 1974 read "The publishers of the Revised Codes of Montana, 1947, are directed, under the supervision of the supreme court of Montana, to make the substitutions enumerated in sections 104, 105, 106, 107, 108, 109, 110 and 111 of this act, when reprinting sections or portions of sections of the Revised Codes in either supplements to or replacement volumes for the Revised Codes."

Repealing Clause

Section 113 of Ch. 349, Laws 1974 read "Sections 27-618, 69-3408, 69-3409, 69-4101, 69-4103, 69-4105, 69-4107 through 69-4109, 69-4113, 69-4210, 69-4810, 69-4811, 69-4813, 69-5211, 69-5214, 69-5215, 69-5216, 69-5805, 69-6202, 82A-602, 82A-603, and 82A-609 are repealed."

Effective Date

Section 114 of Ch. 349, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 28, 1974.

CHAPTER 7—DEPARTMENT OF HIGHWAYS

Section

82A-701. Department of highways—creation—head.

82A-701.1. Functions of department.

82A-706.1. Highway commission.

82A-709. Board of highway appeals abolished—functions transferred.

82A-701. Department of highways—creation—head. There is a department of highways. The department head is a director of highways appointed by the governor in accordance with section 82A-106.

History: En. 82A-701 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 204, Ch. 316, L. 1974.

section for "provided for in section 82A-707 of this chapter"; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "appointed by the governor in accordance with section 82A-106" at the end of the

Executive Implementation

This chapter was implemented by Executive Reorganization Order 12-71, dated Dec. 15, 1971, effective Dec. 16, 1971.

82A-701.1. Functions of department. The department has responsibility for the administration of laws relating to public highways, including, but not limited to, laws on:

- (1) Speed and traffic regulations (Title 32, chapters 11 and 21);
- (2) Designation and construction of federal-aid and state highways (Title 32, chapters 24, 26, and 39);
- (3) State vehicle fees (Title 32, chapters 32 through 34);
- (4) Letting contracts for highway construction (Title 32, chapter 41);
- (5) Designation of controlled access highways (Title 32, chapter 43);
- (6) Regulation of junkyards (Title 32, chapter 45);
- (7) Regulation of outdoor advertising (Title 32, chapter 47);

- (8) State motor pool (Title 53, chapter 5);
- (9) Motor vehicle reciprocity (Title 53, chapter 7).

History: En. 82A-701.1 by Sec. 205, Ch. 316, L. 1974.

82A-702 to 82A-706. Repealed.

Repeal

Sections 82A-702 to 82A-706 (Sec. 1, Ch. 272, L. 1971; Sec. 3, Ch. 250, L. 1973; Sec. 206, Ch. 316, L. 1974), relating to

reorganization of the department of highways, were repealed by Sec. 3, Ch. 28, Laws of 1974; Sec. 209, Ch. 316, Laws of 1974.

82A-706.1. Highway commission. (1) (a) The highway commission consists of five (5) members. One (1) member shall be a bona fide resident of and appointed from each of these districts, each composed of the counties named:

(i) District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Lewis and Clark, Jefferson, Broadwater.

(ii) District 2. Powell, Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Wheatland, Park, Sweet Grass.

(iii) District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, Judith Basin.

(iv) District 4. Fergus, Petroleum, Garfield, Phillips, Valley, McCone, Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels, Sheridan.

(v) District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Rosebud, Treasure, Custer, Powder River, Carter, Fallon.

(b) No two (2) members may at the time of appointment or thereafter during their respective terms of office be residents of the same district.

(c) Not more than three (3) members may at the time of appointment or thereafter during their respective terms be members of the same political party.

(d) No elective state official or state officer during the term of office to which he was elected or appointed and no state employee may be a member of the commission.

(2) No resolution, motion, or other decision of the commission may be adopted or passed without the favorable vote of at least three (3) members.

(3) The commission is allocated to the department for administrative purposes only as prescribed in section 82A-108.

(4) The commission is designated as a quasi-judicial board for purposes of section 82A-112. However, members of the commission on December 15, 1971, shall serve for the remainder of their terms.

History: En. Sec. 4-102, Ch. 197, L. 1965; Sec. 32-2402, R. C. M. 1947; amd. and redes. 82A-706.1 by Sec. 72, Ch. 316, L. 1974.

Amendments

The 1974 amendment renumbered this section; deleted "state" before "highway

commission"; deleted "to be appointed by the governor with the consent of the senate" at the end of the first sentence; deleted a former second sentence reading "Members of the commission now holding office shall continue until the expiration of their terms"; and added the rest of the section.

DECISIONS UNDER FORMER LAW

Application

Resolution adopted by state highway commission authorizing chief counsel thereof "to employ and engage such outside fee counsel as he, in his discretion shall deem reasonable and necessary, to

represent the Montana Highway Commission in whatever type of case arises," was proper and did not infringe on any powers, duties or responsibilities of state attorney general. *Woodahl v. State Highway Commission*, 155 M 32, 465 P 2d 818.

82A-707, 82A-708. Repealed.**Repeal**

Sections 82A-707 and 82A-708 (Sec. 1, Ch. 272, L. 1971), relating to creation of

the director of highways, and abolition of various highway agencies, were repealed by Sec. 209, Ch. 316, Laws of 1974.

82A-709. Board of highway appeals abolished—functions transferred.

The board of highway appeals, created in section 82A-704, is abolished and its functions are transferred as follows:

(1) Its functions relating to the quasi-judicial capacity of hearing grievances of personnel of the department are transferred to the board of personnel appeals provided for in section 82A-1014. Unless inconsistent with this title, any reference in the Revised Codes of Montana, 1947, to the board of highway appeals (pertaining to its functions of hearing grievances of personnel of the department) means the board of personnel appeals;

(2) Its functions relating to the hearing of disputes resulting from the administration and enforcement of proportional registration agreements under Title 53, chapter 7, are transferred to the highway commission. Unless inconsistent with this title, any reference in the Revised Codes of Montana, 1947, to the board of highway appeals (pertaining to its functions contained in Title 53, chapter 7) means the highway commission.

History: En. 82A-709 by Sec. 1, Ch. 28, L. 1974.

appeals and transferring its functions to the board of personnel appeals and the highway commission; providing for personnel appeals; and repealing sections 82A-704 and 82A-705, R. C. M. 1947.

Title of Act

An act abolishing the board of highway

CHAPTER 8—DEPARTMENT OF INSTITUTIONS

Section

82A-801. Department of institutions—creation—head.

82A-801.1. Functions of department.

82A-804. Board of pardons—composition—allocation—designation.

82A-805. Board of eugenics—composition—qualifications—allocation—designation.

82A-806. Board of institutions—composition—qualifications—designation.

82A-801. Department of institutions—creation—head. There is created a department of institutions. The department head is a director of institutions appointed by the governor in accordance with section 82A-106 of this act.

History: En. 82A-801 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 13-71, dated Dec. 16, 1971, effective Dec. 17, 1971.

82A-801.1 REORGANIZATION OF EXECUTIVE DEPARTMENT

82A-801.1. Functions of department. The department and its units are responsible for the administration of laws relating to institutions, including, but not limited to, laws pertaining to:

- (1) District youth guidance homes (Title 10, chapter 11);
- (2) Warm Springs state hospital (Title 38, chapter 1);
- (3) Examination and commitment of persons mentally deranged (Title 38, chapter 2);
- (4) Patient transfers (Title 38, chapter 3);
- (5) Examination of patients and voluntary admissions (Title 38, chapter 4);
- (6) Convalescent leave of patients (Title 38, chapter 5);
- (7) Voluntary sterilizations (Title 69, chapter 64);
- (8) Juvenile facilities (Title 80, chapter 14);
- (9) Institutional industries (Title 80, chapter 15);
- (10) Payments for care of patients (Title 80, chapter 16);
- (11) Galen state hospital (Title 80, chapter 17);
- (12) Montana veterans' home (Title 80, chapter 18);
- (13) State prison (Title 80, chapter 19);
- (14) Montana childrens center (Title 80, chapter 21);
- (15) Mountain View school and Pine Hills school (Title 80, chapter 22);
- (16) Boulder river school and hospital (Title 80, chapter 23);
- (17) Mental hygiene services and mental health centers (Title 80, chapter 24);
- (18) Montana center for the aged (Title 80, chapter 25);
- (19) Mental retardation programs (Title 80, chapter 26);
- (20) Probation, parole, and clemency (Title 94, chapter 98).

History: En. 82A-801.1 by Sec. 77, Ch. 120, L. 1974.

82A-802, 82A-803. Repealed.

Repeal

Sections 82A-802 and 82A-803 (Sec. 1, Ch. 272, L. 1971; Secs. 4, 5, Ch. 250, L. 1973), relating to the abolishment of the state department of institutions and the

state board of institutions, and the transfer of their functions to the department of institutions, were repealed by Sec. 96, Ch. 120, Laws of 1974.

82A-804. Board of pardons—composition—allocation—designation. (1) There is a board of pardons.

- (2) The board consists of three (3) members.
- (3) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.
- (4) The board is designated as a quasi-judicial board for purposes of section 82A-112.

History: En. 82A-804 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 78, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted subsection (1) for a statement continuing

the state board of pardons; inserted subsection (2); substituted "allocated" for "transferred" in subsection (3); deleted a former subsection (4) which changed the

name of the state director of probation and parole to the administrator of probation and parole; and made minor changes in phraseology and punctuation.

82A-805. Board of eugenics—composition—qualifications—allocation—designation. (1) There is a board of eugenics.

(2) The board consists of seven (7) members, and one (1) ex officio member. The members are:

(a) Two (2) physicians licensed to practice medicine and surgery in this state to be appointed after considering the recommendation of the Montana medical association;

(b) One (1) lawyer licensed to practice law in this state to be appointed after considering the recommendation of the Montana bar association;

(c) Three (3) lay members;

(d) One (1) psychologist;

(e) The director of institutions, who is an ex officio member of the board.

(3) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112.

History: En. 82A-805 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 79, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted sub-

section (1) for a statement continuing the state board of eugenics; inserted subsection (2); substituted "allocated" for "transferred" in subsection (3); and made minor changes in phraseology, punctuation and style.

82A-806. Board of institutions—composition—qualifications—designation. (1) There is a board of institutions.

(2) The board consists of five (5) members. The board members shall be selected so that not more than three (3) are from the same congressional district, and so that not more than three (3) are affiliated with the same political party. The members shall be qualified by aptitude, experience, and interest.

(3) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112.

History: En. 82A-806 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 80, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted subsection (1) for a statement continuing the state board of institutions; inserted subsection (2); substituted "allocated"

for "transferred" in subsection (3); deleted a former subsection (3) relating to the board acting in an advisory capacity to the department; deleted a former subsection (4) relating to the board continuing to hear disputes concerning custodial institutions including inmate and personnel grievances; and made minor changes in phraseology and punctuation.

82A-807. Repealed.

Repeal

Section 82A-807 (Sec. 1, Ch. 272, L. 1971), relating to abolishment of the Boulder River school construction committee, council of superintendents, the

institutional chaplaincy advisory committee, and the advisory councils to the state prison and veterans' home, was repealed by Sec. 96, Ch. 120, Laws of 1974.

CHAPTER 9—DEPARTMENT OF INTERGOVERNMENTAL RELATIONS

Section

82A-901. Department of intergovernmental relations—creation—head.

82A-901.1. Functions of department.

82A-904. Board of county printing—composition—qualification—allocation.

82A-905. Board of aeronautics—composition—qualification—allocation—designation.

82A-901. Department of intergovernmental relations—creation—head.

There is created a department of intergovernmental relations. The department head is a director of intergovernmental relations appointed by the governor in accordance with section 82A-106 of this act.

History: En. 82A-901 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 4-72, dated Aug. 30, 1972, effective Sept. 1, 1972.

82A-901.1. Functions of department. The department and its units are responsible for administering laws pertaining to relationships between the state and local and federal governments, including, but not limited to, laws pertaining to:

- (1) Aeronautics (Title 1, chapters 1 to 9);
- (2) Highway traffic safety (Title 32, chapter 46);
- (3) Indian affairs (Title 82, chapter 27);
- (4) Planning and economic development (Title 82, chapter 37);
- (5) Examination of political subdivisions (Title 82, chapter 43);
- (6) Economic opportunity and poverty relief (Title 71, chapter 16);
- (7) County printing (Title 16, chapter 12).

History: En. 82A-901.1 by Sec. 102, Ch. 348, L. 1974.

82A-902, 82A-903. Repealed.**Repeal**

Sections 82A-902 and 82A-903 (Sec. 1, Ch. 272, L. 1971), relating to abolition of the highway safety board, the department of planning and economic development,

and the planning and development commission, and the transfer of various functions to the department of intergovernmental relations, were repealed by Sec. 107, Ch. 348, Laws of 1974.

82A-904. Board of county printing—composition—qualification—allocation. (1) There is a board of county printing.

(2) The board consists of five (5) members appointed by the governor for terms of two (2) years. The members are:

- (a) Two (2) members of the printing industry;
- (b) Two (2) county commissioners;
- (c) One (1) member of the general public.

(3) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

History: En. 82A-904 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 103, Ch. 348, L. 1974.

Amendments

The 1974 amendment rewrote this section. Prior to amendment, it read: "(1)

The county printing commission, provided for in Title 16, chapter 12, R. C. M. 1947, and its functions are continued, and the commission is renamed the board of county printing. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the county printing commission means the board of county printing.

"(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

"(3) Members of the board before the effective date of this chapter serve for the remainder of their terms. The composition, method of appointment, terms of office, and qualifications of board members remain as prescribed in section 16-1227, R. C. M. 1947. Members shall be compensated and reimbursed as are members of advisory councils in section 82A-110 of this act."

82A-905. Board of aeronautics—composition—qualification—allocation—designation. (1) There is a board of aeronautics.

(2) The board consists of seven (7) members. The members are:

(a) One (1) member of the Montana pilots' association;

(b) One (1) member of the Montana chamber of commerce;

(c) One (1) member of the municipal league;

(d) One (1) member of the county commissioners association;

(e) One (1) person actively engaged in aviation education in this state;

(f) One (1) person, representative of interstate commercial airline operators, who must at the time of appointment be an employee or official of an interstate commercial airline operator and a resident of this state;

(g) One (1) person who must at the time of appointment be an active base operator in this state or an official of a base operator in this state, of flying services or flying schools.

(3) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112.

History: En. 82A-905 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 104, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted subsection (1) for a subsection reading: "(1) The state aeronautics commission, created in Title 1, chapter 2, R. C. M. 1947, is continued, and the commission is renamed the board of aeronautics"; inserted subsection (2) and redesignated former subsection (2) as subsection (3); deleted former subsection (3) which read: "The board shall act in an advisory capacity to the department on those matters relating to the functions of the aeronautics commission transferred to the department in

section 82A-903 of this chapter"; deleted former subsection (4) which read: "The board retains the quasi-judicial and quasi-legislative functions contained in sections 1-322 through 1-324, R. C. M. 1947 (pertaining to granting and suspending certificates of public convenience and necessity for air carriers, setting rates, and related matters). Unless inconsistent with this act, any reference in Title 1, chapter 2, R. C. M. 1947, to the state aeronautics commission relating to the quasi-judicial and quasi-legislative functions retained in the board means the board of aeronautics"; redesignated former subsection (5) as subsection (4); and made minor changes in phraseology.

82A-906. Repealed.

Repeal

Section 82A-906 (Sec. 1, Ch. 272, L. 1971), relating to abolition of the gover-

nor's highway safety task force, was repealed by Sec. 107, Ch. 348, Laws of 1974.

82A-1001 REORGANIZATION OF EXECUTIVE DEPARTMENT

CHAPTER 10—DEPARTMENT OF LABOR AND INDUSTRY

Section

- 82A-1001. Department of labor and industry—creation—head.
- 82A-1002. Agencies abolished—functions transferred to department.
- 82A-1003. Additional functions transferred to the department.
- 82A-1004. Division of workmen's compensation—creation—head.
- 82A-1005. Agencies abolished—functions transferred to division of workmen's compensation.
- 82A-1006. Division of employment security—creation—head—bureaus.
- 82A-1007. Employment security commission abolished—functions transferred to division of employment security.
- 82A-1008. Board of labor appeals—creation—allocation—composition—function—designation.
- 82A-1009. Functions transferred to board of labor appeals.
- 82A-1010. Additional agencies abolished.
- 82A-1011. Occupational health advisory committee abolished.
- 82A-1014. Board of personnel appeals created.
- 82A-1015. Commission for human rights.

82A-1001. Department of labor and industry—creation—head. There is created a department of labor and industry. As prescribed in article XVIII, section 1 of the Montana constitution, the department head is the commissioner of labor and industry. The commissioner holding office before the effective date of this chapter continues as the commissioner of the department of labor and industry created by this chapter for the remainder of his term. The commissioner shall be appointed and serve as provided in article XVIII, section 1 of the Montana constitution.

History: En. 82A-1001 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 11-71, dated Dec. 10, 1971, effective Dec. 13, 1971.

82A-1002. Agencies abolished—functions transferred to department. (1) The department of labor and industry, created in Title 41, chapter 16, R. C. M. 1947, and its units are abolished, and their functions are transferred to the department of labor and industry created in this chapter. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department of labor and industry or its units means the department of labor and industry created in this chapter.

(2) The apprenticeship council, provided for in Title 41, chapter 12, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the apprenticeship council means the department of labor and industry created in this chapter.

(3) The commission on the status of women, administratively created, is abolished, and its functions are transferred to the department.

History: En. 82A-1002 by Sec. 1, Ch. 272, L. 1971.

82A-1003. Additional functions transferred to the department. (1) The functions of the state board of health, which are contained in Title 41, chapter 22, R. C. M. 1947 (pertaining to nurses' employment practices), are transferred to the department. Unless inconsistent with this act, any reference in Title 41, chapter 22, R. C. M. 1947, to the state

board of health means the department of labor and industry created in this chapter.

(2) The functions of the state department of health relating to enforcing the industrial hygiene laws under section 69-4203(5), R. C. M. 1947, are transferred to the department of labor and industry created in this chapter. The department of labor and industry, on its own motion, or whenever it receives a notice of an alleged violation of the industrial hygiene laws or rules established thereunder from the department of health and environmental sciences, shall file a complaint of the alleged violation in the appropriate court and diligently pursue the action to its completion. Unless inconsistent with this act, any reference in Title 69, chapter 42, R. C. M. 1947, to the state department of health relating to its enforcement functions means the department of labor and industry created in this chapter.

History: En. 82A-1003 by Sec. 1, Ch. 272, L. 1971.

Compiler's Notes

Section 69-4203, referred to in subsection (2), was repealed by Sec. 18, Ch. 316, Laws 1971.

82A-1004. Division of workmen's compensation—creation—head. (1) There is created a division of workmen's compensation within the department. The division head is an administrator appointed by the governor as are directors in accordance with section 82A-106 of this act.

(2) The division is allocated to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the division may hire its own personnel, and section 82A-108(2)(d) does not apply.

History: En. 82A-1004 by Sec. 1, Ch. 272, L. 1971.

82A-1005. Agencies abolished—functions transferred to division of workmen's compensation. (1) The industrial accident board, created in Title 92, chapter 1, R. C. M. 1947, and its units, including the department of safety, created in Title 41, chapter 17, R. C. M. 1947, are abolished, and their functions, except the board's investment functions contained in Title 92, chapter 13, R. C. M. 1947, transferred to the board of investments in chapter 2 of this act, are transferred to the division. The administrator of the division shall make the final determinations for workmen's compensation claims. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the industrial accident board or its units, except the references relating to the board's investment functions in Title 92, chapter 13, R. C. M. 1947, transferred to the board of investments in chapter 2 of this act, means the division of workmen's compensation of the department of labor and industry created in this chapter.

(2) The advisory committee on boiler rules, created in Title 69, chapter 15, R. C. M. 1947, is abolished, and its functions are transferred to the division. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the advisory committee on boiler rules

means the division of workmen's compensation of the department of labor and industry created in this chapter.

(3) The board of examiners of applicants for coal mine foreman and mine examiner, and the board of examiners of applicants for state coal mine inspector, provided for in Title 50, chapter 4, R. C. M. 1947, are abolished, and their functions are transferred to the division. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of examiners of applicants for coal mine foreman and mine examiner and the board of examiners of applicants for state coal mine inspector, means the division of workmen's compensation of the department of labor and industry created in this chapter.

(4) The power line construction code committee, administratively created, is abolished, and its functions are transferred to the division.

History: En. 82A-1005 by Sec. 1, Ch. 272, L. 1971.

82A-1006. Division of employment security — creation — head — bureaus. (1) There is created a division of employment security within the department. The division head is an administrator appointed by the commissioner of labor and industry.

(2) Within the division of employment security are the following bureaus:

- (a) The bureau of Montana state employment service.
- (b) The bureau of unemployment insurance.

Each bureau shall be headed by a full-time chief appointed by the administrator. The administrator shall establish such other bureaus within the division as are required for the receipt of federal funds. Personnel of the division shall be employed in accordance with merit system standards.

History: En. 82A-1006 by Sec. 1, Ch. 272, L. 1971.

82A-1007. Employment security commission abolished—functions transferred to division of employment security. The employment security commission of Montana, created in Title 87, chapter 1, R. C. M. 1947, and its units are abolished, and their functions, except the quasi-judicial functions transferred to the board of labor appeals in section 82A-1009 of this chapter, are transferred to the division of employment security.

History: En. 82A-1007 by Sec. 1, Ch. 272, L. 1971.

82A-1008. Board of labor appeals—creation—allocation—composition—function—designation. (1) There is created a board of labor appeals.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board is composed of three (3) members of the public, who are not employees of the state government, appointed by the governor as prescribed in section 82A-112 of this act.

(4) The board shall act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws.

(5) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

History: En. 82A-1008 by Sec. 1, Ch. 272, L. 1971.

82A-1009. Functions transferred to board of labor appeals. The quasi-judicial functions of the employment security commission of Montana, contained in Title 87, chapter 1, R. C. M. 1947 (pertaining to the unemployment compensation laws), are transferred to the board. Unless inconsistent with this act, any reference in Title 87, chapter 1, R. C. M. 1947, to the employment security commission of Montana relating to the quasi-judicial functions transferred to the board of labor appeals means the board of labor appeals.

History: En. 82A-1009 by Sec. 1, Ch. 272, L. 1971.

82A-1010. Additional agencies abolished. The following agencies are abolished:

(1) The labor-safety study commission, provided for in Title 41, chapter 21, R. C. M. 1947.

(2) The state board of arbitration and conciliation, created in Title 41, chapter 9, R. C. M. 1947.

History: En. 82A-1010 by Sec. 1, Ch. 272, L. 1971.

82A-1011. Occupational health advisory committee abolished. The occupation health advisory committee, created in section 69-4210, R. C. M. 1947, is abolished.

History: En. Sec. 1, Ch. 225, L. 1973.

Title of Act

Compiler's Notes

An act abolishing the occupation health advisory committee.

Section 69-4210, referred to in this section, was repealed by Sec. 113, Ch. 349, Laws of 1974.

82A-1014. Board of personnel appeals created. (1) There is created a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in section 82A-108.

(3) The board consists of five (5) members appointed by the governor. Two (2) members shall represent management, two (2) members shall represent employees or employee organizations of the state, and one (1) member shall represent a neutral position.

(4) Any employee or his representative affected by the operation of this act is entitled to file a complaint with the board and to be heard, under the provisions of a grievance procedure to be prescribed by the board. The board may instruct the department to take corrective action that may be necessary to resolve grievances that are found to be legitimate.

82A-1015 REORGANIZATION OF EXECUTIVE DEPARTMENT

(5) The board is designated a quasi-judicial board for purposes of section 82A-112.

History: En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974. scribed in section 82A-112" after "governor" near the beginning of subdivision (3); and added subdivision (5).

Amendments

The 1974 amendment deleted "as pre-

82A-1015. Commission for human rights. (1) There is a commission for human rights.

(2) The commission consists of five (5) members appointed by the governor.

(3) The commission is designated as a quasi-judicial board for the purposes of section 82A-112.

(4) The commission is allocated to the department of labor and industry for administrative purposes only as provided in section 82A-108.

History: En. 82A-1015 by Sec. 4, Ch. 283, L. 1974.

CHAPTER 11—DEPARTMENT OF STATE LANDS

Section

82A-1101. Department of state lands—head.

82A-1101.1. Functions of department.

82A-1104. Commissioner of state lands.

82A-1101. Department of state lands—head. There is a department of state lands. The department head is the board of land commissioners, provided for in article X, section 4 of the constitution of this state.

History: En. 82A-1101 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 113, Ch. 428, L. 1973. commissioners, created in article XI, section 4 of the Montana constitution"; and made a minor change in style.

Amendments

The 1973 amendment rewrote the second sentence which formerly read "The department head is the state board of land

Executive Implementation

This chapter was implemented by Executive Reorganization Order 2-71, dated July 26, 1971, effective Aug. 1, 1971.

82A-1101.1. Functions of department. The department has responsibility for the administration of laws relating to state lands, including, but not limited to, laws on:

(1) Selection, classification, appraisal, and exchange of lands (Title 81, chapter 3);

(2) Leasing of agricultural lands (Title 81, chapter 4);

(3) Coal mining leases and permits (Title 81, chapter 5);

(4) Prospecting permits and mining lease (Title 81, chapter 6);

(5) Leases and permits for deposits of stone, gravel, sand, and other minerals (Title 81, chapter 7)

(6) Granting of easements for public purposes (Title 81, chapter 8);

(7) Sale of state lands (Title 81, chapter 9);

(8) Timber sales (Title 81, chapter 16);

(9) Oil and gas leases (Title 81, chapter 17);

(10) Hydroelectric power sites (Title 81, chapter 18);

- (11) Exchange of timbered, cut, or burned over lands (Title 81, chapter 22);
- (12) Resource development (Title 81, chapter 24);
- (13) Mined land reclamation (Title 50, chapters 10 and 12).

History: En. 82A-1101.1 by Sec. 114, Ch. 428, L. 1973.

Title of Act

An act for the codification and general

revision of the laws relating to the department of state lands, and providing that this act is effective upon its passage and approval.

82A-1102, 82A-1103. Repealed.

Repeal

Sections 82A-1102, 82A-1103 (Sec. 1, Ch. 272, L. 1971), relating to functions of the

department of state lands, were repealed by Sec. 116, Ch. 428, Laws 1973.

82A-1104. Commissioner of state lands. (1) There is a commissioner of state lands.

(2) The commissioner is the chief administrative officer of the department, and under the direction of the board of land commissioners he is responsible for the administration of the functions vested in the department. He shall also perform those functions that are delegated to him by the board.

(3) The commissioner shall be appointed and serve as provided for directors in section 82A-106.

History: En. 82A-1104 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 115, Ch. 428, L. 1973.

end of the first sentence in subsection (2); and made minor changes in style and phraseology.

Amendments

The 1973 amendment divided subsection (2) into two sentences; inserted "and" following "administrative officer of the department" in the first sentence of subsection (2); deleted "state" before "board of land commissioners" in the first sentence of subsection (2); inserted "he is responsible for the administration of the functions vested in the department" at the

Repealing Clause

Section 116 of Ch. 428, Laws 1973 read "Sections 50-1101 through 50-1114, 81-101, 81-201 through 81-203, 81-204.1, 81-207 through 81-210, 81-305, 81-306, 81-422.1, 81-618 through 81-620, 81-916, 81-934 through 81-942, 81-1301, 81-1702.3, 81-1703, 81-1713, 81-1714, 81-1724, 81-2304, 82-904, 82A-1102, 82A-1103, and 83-105, R. C. M. 1947, are repealed."

CHAPTER 12—DEPARTMENT OF JUSTICE

Section

- 82A-1201. Department of justice—creation—head.
- 82A-1202. Agencies abolished—functions transferred to department.
- 82A-1203. Additional functions transferred to department.
- 82A-1204. Division of motor vehicles—creation.
- 82A-1205. Agencies abolished—functions transferred to division.
- 82A-1206. Functions of highway patrol and highway patrol chief transferred to division.
- 82A-1207. Board of crime control—creation—continued—transfer—composition.
- 82A-1208. Fire prevention advisory commission abolished.
- 82A-1209. References.

82A-1201. Department of justice—creation—head. There is created a department of justice. The department head is the attorney general.

82A-1202 REORGANIZATION OF EXECUTIVE DEPARTMENT

History: En. 82-1201 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 6, Ch. 250, L. 1973.

Amendments

The 1973 amendment substituted "justice" for "law enforcement and public safety" in the first sentence.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 3-72, dated Aug. 30, 1972, effective Sept. 1, 1972.

82A-1202. Agencies abolished—functions transferred to department.

(1) The state bureau of criminal identification and investigation, provided for in Title 80, chapter 20, R. C. M. 1947, is abolished, and its statutory functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state bureau of criminal identification and investigation means the department of justice.

(2) The position of criminal investigator created within the office of the attorney general in Title 82, chapter 4, R. C. M. 1947, is abolished, and the functions of the position are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the position of criminal investigator means the department of justice.

(3) The state law enforcement teletypewriter communications committee, provided for in Title 82, chapter 39, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the law enforcement teletypewriter communications committee means the department of justice.

(4) The Montana law enforcement academy advisory board, provided for in Title 75, chapter 52, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana law enforcement academy advisory board means the department of justice.

(5) The office of state fire marshal, created in Title 82, chapter 12, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the office of state fire marshal means the department of justice.

(6) The state building code council, created in Title 69, chapter 21, R. C. M. 1947, is abolished, and its functions are transferred to the department of administration. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state building code council means the department of administration.

History: En. 82A-1202 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 2, Ch. 211, L. 1973; amd. Sec. 7, Ch. 250, L. 1973.

section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 211 and once by Ch. 250. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite

Amendments

Chapter 211, Laws of 1973, added "of administration" to the end of the first sentence in subsection (6) and substituted "administration" for "law enforcement and public safety" at the end of the second sentence of subsection (6).

Chapter 250, Laws of 1973, substituted "justice" for "law enforcement and public safety" throughout the section.

Effective Date

Section 3 of Ch. 211, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

82A-1203. Additional functions transferred to department. (1) The functions of the state electrical board of making inspections of electrical installations and issuing tags and charging fees therefor in section 66-2805(c)(i), R. C. M. 1947, and of establishing an electrical code in section 66-2802(i), R. C. M. 1947, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state electrical board relating to its functions of making inspections of electrical installations and issuing tags and charging fees therefor or of establishing an electrical code means the department of justice.

(2) The functions of the state controller and the department of administration, which are contained in Title 69, chapter 21, R. C. M. 1947 (pertaining to the state building code), are transferred to the department. Unless inconsistent with this act, any reference in Title 69, chapter 21, R. C. M. 1947, to the state controller or the department of administration means the department of justice.

(3) The function of the secretary of state of registering machine guns in section 94-3108, R. C. M. 1947, is transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the secretary of state relating to his function of registering machine guns means the department of justice.

History: En. 82A-1203 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 8, Ch. 250, L. 1973.

Amendments

The 1973 amendment substituted "justice" for "law enforcement and public safety" throughout the section.

Compiler's Notes

Section 94-3108, referred to in subsection (3), was redesignated section 94-8-208 by Sec. 29, Ch. 513, Laws of 1973.

82A-1204. Division of motor vehicles—creation. There is created a division of motor vehicles within the department.

History: En. 82A-1204 by Sec. 1, Ch. 272, L. 1971.

82A-1205. Agencies abolished—functions transferred to division. (1) The position of registrar of motor vehicles, trailers and semitrailers, created in Title 53, chapter 1, R. C. M. 1947, is abolished, and the functions of the position, except the function of providing license plates for motor vehicles provided for in Title 53, chapter 1, R. C. M. 1947, are transferred to the division of motor vehicles. The function of providing license plates remains a function of the warden of the state prison. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the registrar of motor vehicles, trailers and semitrailers, except the references relating to the function of providing license plates, means the division of motor vehicles of the department of justice.

(2) The Montana highway patrol board, provided for in Title 31, chapter 1, R. C. M. 1947, is abolished, and its functions, except the function of appointing the highway patrol chief in section 31-104, R. C. M. 1947, which is hereby transferred to the attorney general, are transferred to the division of motor vehicles. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana highway patrol board means the division of motor vehicles of the department of justice, except references in section 31-104, R. C. M. 1947, relating to the function of appointing the highway patrol chief, where it means the attorney general.

History: En. 82A-1205 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 250, L. 1973.

Amendments

The 1973 amendment substituted "justice" for "law enforcement and public safety" in subsections (1) and (2).

82A-1206. Functions of highway patrol and highway patrol chief transferred to division. The functions of the highway patrol, which is created in Title 31, chapter 1, R. C. M. 1947, and of the position of highway patrol chief, which is provided for in Title 31, chapter 1, R. C. M. 1947, are transferred to the division of motor vehicles.

History: En. 82A-1206 by Sec. 1, Ch. 272, L. 1971.

82A-1207. Board of crime control—creation—continued—transfer—composition. (1) The administratively created agency known as the governor's crime control commission is hereby created by law as the board of crime control, and its functions are continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.

(3) The board is composed of sixteen (16) members appointed by the governor. The board shall be representative of state and local law-enforcement agencies and units of general local government.

(4) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, the board shall perform the functions assigned to it under that act. The board shall have the authority to establish minimum qualifying standards for employment of peace officers, require basic training for such officers, establish minimum standards for equipment and procedures and for advanced in-service training for such officers and establish minimum standards for any law enforcement training schools administered by the state or any of its political subdivisions or agencies, to ensure the public health, welfare and safety. The board shall waive the minimum qualification standard for good cause shown.

(5) The members of the governor's crime control commission before the effective date of this chapter continue as members of the board of crime control for the remainder of the governor's term; thereafter members shall be appointed in accordance with section 82A-112(1)(b) of this act.

(6) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act, but section 82A-112(2)(b) does not apply.

History: En. 82A-1207 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 61, L. 1973.

Effective Date

Section 2 of Ch. 61, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved February 25, 1973.

Amendments

The 1973 amendment added the second sentence to subsection (4).

82A-1208. Fire prevention advisory commission abolished. The fire prevention advisory commission, provided for in section 82-1201, R. C. M. 1947, is abolished.

History: En. 82A-1208 by Sec. 1, Ch. 272, L. 1971.

82A-1209. References. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department of law enforcement and public safety means the department of justice.

History: En. 82A-1209 by Sec. 12, Ch. 250, L. 1973.

82A-1203, 82A-1205, 82A-1602 and 82A-1605, R. C. M. 1947; adding a new section; and providing an effective date.

Title of Act

An act to change the name of the department of law enforcement and public safety to the department of justice; amending sections 82A-104, 82A-202, 82A-703, 82A-802, 82A-803, 82A-1201, 82A-1202,

Effective Date

Section 13 of Ch. 250, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 9, 1973.

CHAPTER 13—DEPARTMENT OF LIVESTOCK

Section

82A-1301. Department of livestock—creation—head.
82A-1301.1. Functions of department.
82A-1303. Board of livestock—composition.

82A-1301. Department of livestock—creation—head. There is created a department of livestock. The department head is the board of livestock provided for in section 82A-1303 of this chapter.

History: En. 82A-1301 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 8-71, dated Nov. 19, 1971, effective Nov. 22, 1971.

82A-1301.1. Functions of department. The department and its units are responsible for administering laws pertaining to livestock, including, but not limited to, laws pertaining to:

- (1) Eggs and egg dealers (Title 3, chapter 23);
- (2) Dairies and dairy products (Title 3, chapter 24);
- (3) Montana quality label (Title 3, chapter 25);
- (4) Control of rodents (Title 3, chapter 27);
- (5) Dairy cattle and slaughterhouses (Title 27, chapter 1);
- (6) Preventing, controlling, and eradicating diseases of animals (Title 46, chapter 2);
- (7) Tuberculin regulation (Title 46, chapter 3);

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- (8) Butchers and meat peddlers (Title 46, chapter 5);
- (9) Brands (Title 46, chapter 6);
- (10) Livestock inspectors (Title 46, chapter 7);
- (11) Inspection of livestock (Title 46, chapter 8);
- (12) Livestock markets (Title 46, chapter 9);
- (13) Estrays (Title 46, chapter 10);
- (14) Hide dealers (Title 46, chapter 11);
- (15) Livestock improvement (Title 46, chapter 12);
- (16) Fences (Title 46, chapter 14);
- (17) Bounties (Title 46, chapter 19);
- (18) Impounding livestock (Title 46, chapter 20);
- (19) Rendering plants (Title 46, chapter 24);
- (20) Artificial insemination (Title 46, chapter 25);
- (21) Feeding garbage to animals (Title 46, chapter 26);
- (22) Livestock protection (Title 46, chapter 27);
- (23) Livestock dealers (Title 46, chapter 29).

History: En. 82A-1301.1 by Sec. 197,
Ch. 310, L. 1974.

82A-1302. Repealed.

Repeal

Section 82A-1302 (Sec. 1, Ch. 272, L. 1971), relating to functions of the department of agriculture and commissioner of

agriculture transferred to the department of livestock, was repealed by Sec. 201, Ch. 310, Laws of 1974.

82A-1303. Board of livestock—composition. (1) There is a board of livestock.

(2) The board consists of six (6) members appointed by the governor with the consent of the senate. A member shall be a resident of this state and the owner of cattle, sheep, or horses in this state. An appointee is vested with all the powers and duties of his office before being confirmed by the senate, as are directors in section 82A-106(2).

(3) The governor shall designate the chairman of the board.

(4) A member shall serve for a term of six (6) years.

(5) Members of the board shall be reimbursed and compensated as are members of quasi-judicial boards in section 82A-112(1)(e).

History: En. 82A-1303 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 198, Ch. 310, L. 1974.

tion which provided for continuation of the functions of and renaming the livestock commission as the board of livestock.

Amendments

The 1974 amendment rewrote this sec-

82A-1304, 82A-1305. Repealed.

Repeal

Sections 82A-1304 and 82A-1305 (Sec. 1, Ch. 272, L. 1971), relating to abolishment of the livestock sanitary board and the

advisory committee on predatory animal control, were repealed by Sec. 201, Ch. 310, Laws of 1974.

CHAPTER 14—DEPARTMENT OF MILITARY AFFAIRS

Section

- 82A-1401. Department of military affairs—head.
 82A-1405. Adjutant general—qualifications—salary—acting adjutant general.
 82A-1406. Assistant adjutant generals.

82A-1401. Department of military affairs—head. There is a department of military affairs. The department head is the adjutant general of the state, who shall be appointed and serve in the same manner as are directors in section 82A-106. In addition, the adjutant general shall have the qualifications as prescribed in section 82A-1405.

History: En. 82A-1401 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 70, Ch. 94, L. 1974. for “section 77-117, R. C. M. 1947”; and made minor changes in phraseology.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 1-71, dated June 25, 1971, effective July 1, 1971.

Amendments

The 1974 amendment substituted “section 82A-1405” at the end of the section

82A-1402 to 82A-1404. Repealed.**Repeal**

Sections 82A-1402 to 82A-1404 (Sec. 1, Ch. 272, L. 1971), relating to abolition of

military affairs agencies and transfer of functions, were repealed by Sec. 73, Ch. 94, Laws of 1974.

82A-1405. Adjutant general — qualifications — salary—acting adjutant general. (1) The adjutant general shall:

- (a) Have the rank of major general;
- (b) Be selected from the active list of the national guard of this state;
- (c) Be federally recognized in the rank of lieutenant colonel or higher, immediately preceding his appointment;
- (d) Have had at least ten (10) years of service as an officer of the active national guard of this state during the fifteen (15) years immediately preceding his appointment.

(2) A salary may not be paid to the adjutant general by the state, when he is on extended active duty in federal service, or is receiving pay as a civilian employee of the federal government.

(3) If, by reason of call or draft of officers of the Montana national guard into federal service, there is no officer having the qualifications as set forth in this section for adjutant general, then any officer of the national guard may be appointed as acting adjutant general.

History: En. 82A-1405 by Sec. 71, Ch. 94, L. 1974.

82A-1406. Assistant adjutant generals. (1) The adjutant general shall appoint, with the approval of the governor, an assistant adjutant general for the army national guard to be selected from the active list of the army national guard, and an assistant adjutant general for the air national guard to be selected from the active list of the air national guard.

(2) Each assistant adjutant general shall have the qualifications set forth in section 82A-1405 for appointment as adjutant general. However, they shall have the rank of brigadier general.

82A-1501 REORGANIZATION OF EXECUTIVE DEPARTMENT

History: En. 82A-1406 by Sec. 72, Ch. 94, L. 1974.

Repealing Clause

Section 73 of Ch. 94, Laws 1974 read
"Sections 32-1701, 77-101 through 77-163,

77-201 through 77-214, 77-301, 77-401 through 77-420, 77-1101, 77-1201 through 77-1215, 77-1301, 77-1305, 77-1501, 77-1504, 82-207 through 82-211, 82A-1402 through 82A-1404, R. C. M. 1947, are repealed."

CHAPTER 15—DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Section

82A-1501. Department of natural resources and conservation—creation—head.

82A-1501.1. Functions of department.

82A-1508. Board of oil and gas conservation—composition—allocation—designation.

82A-1509. Board of natural resources and conservation—creation—composition—designation.

82A-1501. Department of natural resources and conservation—creation—head. There is a department of natural resources and conservation. The department head is the director of natural resources and conservation appointed by the governor in accordance with section 82A-106.

History: En. 82A-1501 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 114, Ch. 253, L. 1974.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 14-71, dated Dec. 17, 1971, effective Dec. 20, 1971.

Amendments

The 1974 amendment substituted "appointed by the governor in accordance with section 82A-106" at the end of the section for "provided for in section 82A-1508 of this chapter"; and made a minor change in phraseology.

82A-1501.1. Functions of department. The department and its units are responsible for administering laws pertaining to natural resources, including, but not limited to, laws pertaining to:

- (1) Forests and forestry (Title 28, chapter 1);
- (2) Disposal of slashings and forest debris (Title 28, chapter 4);
- (3) Portable sawmill regulation (Title 28, chapter 8);
- (4) Grass conservation (Title 46, chapter 23);
- (5) Conservation of oil and gas (Title 60, chapter 1);
- (6) Underground gas storage (Title 60, chapter 8);
- (7) Utility sites (Title 70, chapter 8);
- (8) Soil and water conservation (Title 76, chapter 1);
- (9) State forests (Title 81, chapter 14);
- (10) Water for state lands (Title 81, chapter 20);
- (11) Water resources (Title 89, chapter 1);
- (12) Weather modification (Title 89, chapter 3);
- (13) Water conservation moneys (Title 89, chapter 4);
- (14) Examination of dams and reservoirs (Title 89, chapter 7);
- (15) Water rights (Title 89, chapter 8);
- (16) Yellowstone river compact (Title 89, chapter 9);
- (17) Irrigation districts (Title 89, chapter 12);
- (18) Regulation of groundwater (Title 89, chapter 29);
- (19) Conervancy districts (Title 89, chapter 34).

History: En. 82A-1501.1 by Sec. 115, Ch. 253, L. 1974.

82A-1502 to 82A-1506. Repealed.**Repeal**

Sections 82A-1502 to 82A-1506 (Sec. 1, Ch. 272, L. 1971), relating to abolition of natural resources agencies, transfer of

functions, and creation of the divisions of water resources, forestry, and conservation districts, were repealed by Sec. 108, Ch. 253, Laws of 1974.

82A-1507. Repealed.**Repeal**

Section 82A-1507 (Sec. 1, Ch. 272, L. 1971), relating to the continuation of the

state soil conservation committee, was repealed by Sec. 2, Ch. 188, Laws 1973.

82A-1507.1. Repealed.**Repeal**

Section 82A-1507.1 (Sec. 1, Ch. 188, L. 1973), relating to the abolition of the

state conservation committee, was repealed by Sec. 108, Ch. 253, Laws of 1974.

82A-1508. Board of oil and gas conservation—composition—allocation—designation. (1) There is a board of oil and gas conservation.

(2) The board consists of five (5) members, two (2) of whom shall be from the oil and gas industry and have had at least three (3) years' experience in the production of oil and gas.

(3) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112.

History: En. 82A-1508 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 116, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted subsection (1) for a subsection reading "(1) The oil and gas conservation commission of the state of Montana, created in Title 60, chapter 1, R. C. M. 1947, and its functions are continued, and the commission

is renamed the board of oil and gas conservation. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the oil and gas conservation commission of the state of Montana means the board of oil and gas conservation"; inserted subsection (2); redesignated former subsections (2) and (3) as subsections (3) and (4) respectively; and made minor changes in phraseology.

82A-1509. Board of natural resources and conservation—creation—composition—designation. (1) There is a board of natural resources and conservation.

(2) The board is composed of seven (7) members, appointed by the governor as prescribed in section 82A-112, informed and experienced in the subjects of natural resources and conservation.

(3) The board is designated as a quasi-judicial board for purposes of section 82A-112.

(4) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

(5) In addition to carrying out its functions as provided by law, the board shall act in an advisory capacity to the department in all other matters.

82A-1510 REORGANIZATION OF EXECUTIVE DEPARTMENT

History: En. 82A-1509 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 384, L. 1973; amd. Sec. 117, Ch. 253, L. 1974.

Amendments

The 1973 amendment increased the number of members of the board from five to seven in subsection (2); and added the second sentence to subsection (2).

The 1974 amendment deleted from the end of subsection (2) two sentences which read "One member shall be appointed from each of the five (5) districts prescribed in section 26-102(1), R. C. M. 1947. The other two (2) members are members at large"; added subsections (4) and (5); and made minor changes in phraseology.

82A-1510 to 82A-1512. Repealed.

Repeal

Sections 82A-1510 to 82A-1512 (Sec. 1, Ch. 272, L. 1971; Sec. 1, Ch. 77, L. 1973), relating to the abolition of natural re-

sources agencies and the creation of the director of natural resources and conservation, were repealed by Sec. 108, Ch. 253, Laws of 1974.

CHAPTER 16—DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING

Section

82A-1601.	Department of professional and occupational licensing—creation—head.
82A-1602.	Department—agencies allocated to.
82A-1602.1.	Board of abstracters—appointment—qualifications—term.
82A-1602.2.	Board of public accountants—appointment—qualifications—term.
82A-1602.3.	Board of architects—appointment—qualifications—term.
82A-1602.4.	Board of athletics—appointment—qualifications—term.
82A-1602.5.	Board of barbers—appointment—qualifications—term.
82A-1602.6.	Board of podiatry examiners—appointment—qualifications—term.
82A-1602.7.	Board of chiropractors—appointment—qualifications—term.
82A-1602.8.	Board of cosmetologists—appointment—qualifications—term.
82A-1602.9.	Board of dentists—appointment—qualifications—term.
82A-1602.10.	State electrical board.
82A-1602.11.	Board of professional engineers and land surveyors—appointment—qualifications—removal—term.
82A-1602.12.	Board of hearing aid dispensers—appointment—qualifications—term.
82A-1602.13.	Board of horse racing created—appointment—removal.
82A-1602.14.	Board of massage therapists—appointment—qualifications—term.
82A-1602.15.	Montana state board of medical examiners—appointment—qualifications—term—removal.
82A-1602.16.	Board of morticians—appointment—qualifications—term.
82A-1602.17.	Board of nursing home administrators—appointment—qualifications—term—removal.
82A-1602.18.	Board of nursing—appointment—qualifications—term—removal.
82A-1602.19.	Board of optometrists—appointment—qualifications—term.
82A-1602.20.	Board of osteopathic physicians—appointment—qualifications—term.
82A-1602.21.	Board of pharmacists—appointment—qualifications—term.
82A-1602.22.	Board of plumbers—appointment—qualifications—term.
82A-1602.23.	Board of real estate—appointment—qualifications—term.
82A-1602.24.	Board of veterinarians—appointment—qualifications—term—removal.
82A-1602.26.	Board of water well contractors—appointment—qualifications—term.
82A-1602.27.	Board of psychologists—appointment—qualifications—term.
82A-1603.	Department—duties.
82A-1604.	Director—duties.
82A-1605.	Boards within department—duties.
82A-1606.	Board within department—composition, etc.
82A-1607.	Electrical inspections and code making.

82A-1601. Department of professional and occupational licensing—creation—head. There is created a department of professional and occupational licensing. The department head is a director of professional and occupational licensing appointed by the governor in accordance with section 82A-106 of this act.

History: En. 82A-1601 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 2-72, dated July 31, 1972, effective Aug. 1, 1972.

82A-1602. Department—agencies allocated to. The agencies provided for in sections 82A-1602.1 through 82A-1602.27, are allocated to the department for administrative purposes only as prescribed in section 82A-108.

History: En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974.

Compiler's Notes

This section was amended five times in 1974, once each by the following: Ch. 57, Ch. 58, Ch. 84, Ch. 99, and Ch. 350. None of the amendatory acts mentioned or incorporated the others. The first four amendments were changes in the names of boards. Ch. 350 then amended the preliminary paragraph, and deleted subdivisions (1) through (26). Sections 82A-1602.1 to 82A-1602.27, referred to in the present section, embody the substance of the deleted subdivisions.

Amendments

Chapter 250, Laws 1973, substituted "justice" for "law enforcement and public safety" in subsection (10).

Chapter 285, Laws of 1973, inserted in the first sentence of subdivision (6) the

citation to the Laws of 1971 and the clause again renaming the board; inserted "or the board of chiropodists" in the second sentence of subdivision (6); substituted "state board of podiatry examiners" for "board of chiropodists" at the end of subdivision (6); inserted in the first sentence of subdivision (15) the citation to the Laws of 1971 and the clause restoring the previous name; and reversed references to the "Montana state board of medical examiners" and to the "board of medical doctors" in the second sentence of subdivision (15).

Chapter 57, Laws of 1974, changed the name of the board of masseurs to the board of massage examiners. Chapter 58, Laws of 1974, changed the name of the board of osteopaths to the board of osteopathic examiners. Chapter 84, Laws of 1974, changed the name of the board of electricians to the state electrical board. Chapter 99, Laws of 1974, changed the name of the board of nurses to the board of nursing.

Chapter 350, Laws of 1974, rewrote this section in its present form. See Compiler's Notes.

82A-1602.1. Board of abstracters—appointment—qualifications—term.

(1) There is a board of abstracters.

(2) The board consists of three (3) members appointed by the governor. Each member shall be a registered abstracter during his term. Members shall be from different counties.

(3) Each member shall serve for a term of three (3) years.

History: En. Sec. 2, Ch. 105, L. 1931; Sec. 66-2102, R. C. M. 1947; amd. and redes. 82A-1602.1 by Sec. 194, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered this section; and rewrote the text to delete specific provisions pertaining to the requirements for appointment of the members.

82A-1602.2. Board of public accountants—appointment—qualifications—term.

(1) There is a board of public accountants.

(2) The board consists of five (5) members appointed by the governor. The members are:

(a) three (3) certified public accountants certified under section 66-1819 who have been certified and actively engaged in the practice of public accounting for at least five (5) years before their appointment. The Montana

society of certified public accountants shall submit to the governor biennially a list of names of two (2) candidates from which the appointments of these members may be made. However, the governor is not restricted to the names on this list. These members may not be residents of the same county.

(b) two (2) public accountants licensed under section 66-1820 who have been actively engaged in the practice of public accounting for at least five (5) years before their appointment. The Montana society of public accountants shall submit to the governor biennially a list of names of two (2) candidates from which the appointment of these members may be made. However, the governor is not restricted to the names on this list. These members may not be residents of the same county.

(3) All members shall be residents of this state and citizens of the United States, and hold current licenses under section 66-1833. The governor shall remove any member whose license to practice has become void, revoked, or suspended, or who ceases to be engaged in the practice of public accounting.

(4) Each member shall serve for a term of six (6) years. A member who has served two (2) successive complete terms is not eligible for reappointment until after the lapse of one (1) year. The governor may, after a hearing, remove a member for neglect of duty or other just cause.

History: En. Sec. 1, Ch. 118, L. 1969; Sec. 66-1813, R. C. M. 1947; amd. and redes. 82A-1602.2 by Sec. 161, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered this section and rewrote the text. For prior version, see section 66-1813 in the parent volume.

82A-1602.3. Board of architects — appointment — qualifications — term.

(1) There is a board of architects.

(2) The board consists of three (3) members, appointed by the governor with the consent of the Senate. Each member shall be a skilled and a capable architect, who has been in continuous practice for three (3) years before his appointment. Not more than two (2) members shall be residents of the same county.

(3) Each member shall serve for a term of three (3) years.

History: En. Sec. 1, Ch. 158, L. 1917; re-en. Sec. 3229, R. C. M. 1921; amd. Sec. 1, Ch. 439, L. 1973; Sec. 66-101, R. C. M. 1947; amd. and redes. 82A-1602.3 by Sec. 24, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered and rewrote this section. Prior to amendment it read: "Within thirty days after the passage of this act, the governor, with the consent and advice of the senate, shall appoint three skilled and capable architects, who shall have been residents of the state of Montana for not less than three years prior to their appointment, not more than two of whom shall be residents of the same county, and who shall

have been in continuous practice of the profession for three years, who shall constitute the board of architectural examiners for the purpose of this act.

"Of the members appointed to terms beginning on March 27, 1973, one (1) member shall be appointed for a one (1) year term, one (1) member shall be appointed for a two (2) year term, and one (1) member shall be appointed for a three (3) year term. After the expiration of these initial terms, members shall serve three (3) year terms. All vacancies shall be filled in like manner as the appointments are made. Appointments made when the senate is not in session shall take effect immediately, and may be confirmed at the next ensuing session."

82A-1602.4. Board of athletics—appointment—qualifications—term. (1)

There is a board of athletics.

(2) The board consists of three (3) members appointed by the governor.

(3) Each member shall serve for a term of three (3) years.

History: En. 82A-1602.4 by Sec. 355, Ch. 350, L. 1974.

82A-1602.5. Board of barbers—appointment—qualifications—term. (1)

There is a board of barbers.

(2) The board consists of three (3) members appointed by the governor. Each member shall be a practicing barber who has been a barber in this state for at least five (5) years immediately before his appointment.

(3) Each member shall serve for a term of three (3) years. The governor may remove a member for cause.

History: En. Sec. 6, Ch. 127, L. 1929; Sec. 66-406, R. C. M. 1947; amd. and redes. 82A-1602.5 by Sec. 38, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered and rewrote this section. For prior version, see section 66-406 in the parent volume.

82A-1602.6. Board of podiatry examiners—appointment—qualifications—term. (1) There is a board of podiatry examiners.

(2) The board consists of five (5) members. One (1) member is a physician selected by the Montana state board of medical examiners at its annual meeting from its membership. One (1) member is the secretary of the Montana state board of medical examiners. Three (3) members are licensed podiatrists appointed by the governor to three (3) year terms selected from a list of six (6) podiatrists submitted by the Montana association of podiatrists. The podiatrist members shall be residents of this state who have engaged in the active practice of podiatry in this state for at least two (2) years and are of high integrity and ability. The governor shall fill a vacancy on the board from the same list of podiatrists.

History: En. 82A-1602.6 by Sec. 356, Ch. 350, L. 1974.

82A-1602.7. Board of chiropractors—appointment—qualifications—term. (1) There is a board of chiropractors.

(2) The board consists of three (3) members appointed by the governor. The members shall be practicing chiropractors of integrity and ability who shall be residents of this state, and who have practiced chiropractic continuously in this state for at least one (1) year. No two (2) members shall be graduates of the same school or college of chiropractic.

(3) Each member shall serve for a term of three (3) years. A member may be removed from office by the governor on sufficient proof of the member's inability or misconduct.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3138, R. C. M. 1921; Sec. 66-501, R. C. M. 1947; amd. and redes. 82A-1602.7 by Sec. 45, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered and rewrote this section. For prior version, see section 66-501 in the parent volume.

82A-1602.8. (3228.4) Board of cosmetologists—appointment—qualifications—term. (1) There is a board of cosmetologists.

(2) The board consists of four (4) members appointed by the governor from a list of eight (8) persons recommended by the Montana state hairdressers' association. Each member shall have actively engaged in the profession of cosmetology for at least five (5) years before his appointment and have been a resident of this state for at least five (5) years immediately before his appointment. Each member shall be at least twenty-five (25) years old and a graduate of a high school or its equivalent. No two (2) members of the board shall be members of or affiliated with a school of cosmetology. The governor shall appoint a fifth member to the board who shall be an attorney licensed to practice law in this state.

(3) Each member shall serve for a term of four (4) years.

History: En. Sec. 4, Ch. 104, L. 1929; amd. Sec. 4, Ch. 222, L. 1939; amd. Sec. 4, Ch. 244, L. 1961; Sec. 66-804, R. C. M. 1947; redes. 82A-1602.8 and amd. by Sec. 1, Ch. 196, L. 1973.

Amendments

The 1973 amendment renumbered this section, formerly 66-804; rewrote the section, changing the name of the board from

"state examining board of cosmetology" to "board of cosmetologists"; increased the number of cosmetologist members from three to four; increased the number of persons to be recommended by the Montana state hairdressers' association from six to eight; and added the provision for the appointment of the attorney member to the board.

82A-1602.9. Board of dentists—appointment—qualifications—term. (1) There is a board of dentists.

(2) The board consists of five (5) members appointed by the governor. The Montana state dental association shall present to the governor, within fifteen (15) days after its regular annual meeting, a list of not less than five (5) candidates from which appointments for vacancies on the board occurring during the ensuing year may be made. At all times at least three (3) members of the board shall be appointed from the list of candidates submitted by the Montana state dental association. Each member shall be licensed to practice dentistry in this state and shall have actively practiced dentistry in this state for at least five (5) continuous years immediately before his appointment. Each member shall be a citizen of the United States, and a resident of this state.

(3) Each member shall serve for a term of five (5) years. The governor may remove a member only for neglect or cause.

History: En. Sec. 1, Ch. 48, L. 1935; Sec. 66-901, R. C. M. 1947; amd. and redes. 82A-1602.9 by Sec. 76, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered and rewrote this section. For prior version, see section 66-901 in the parent volume.

82A-1602.10. State electrical board. (1) There is a state electrical board.

(2) The board consists of five (5) members, appointed by the governor, with the consent of the senate, who shall be residents of this state. One (1) member of the board shall represent the public. One (1) member of the board shall be selected from each of the following four (4) groups, from three (3) names submitted by each group:

- (a) Consumer members of rural electric co-operatives;
- (b) Master licensed electrical contractors;
- (c) Licensed journeyman electricians; and
- (d) Investor-owned electric utilities.

(3) The members of the board shall serve for a term of five (5) years with their terms of office so arranged that one (1) term expires on July 1 of each year.

(4) Each member of the board shall receive twenty-five dollars (\$25) per day for each day served in the discharge of his duties, together with the actual and necessary expenses incurred in the performance of his duties.

(5) A majority of the members of the board shall constitute a quorum for transaction of business.

History: En. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973; Sec. 66-2804, R. C. M. 1947; amd. and redes. 82A-1602.10 by Sec. 271, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted references to the state electrical board throughout for references to the board of electricians; inserted the subsection designations; deleted "The members of the board shall be appointed within twenty (20) days after

the effective date of this act for one (1), two (2), three (3), four (4), and five (5) years, respectively, as determined by the governor" at the beginning of subsection (3); deleted "Any vacancy occurring in the membership of the board shall be filled by the governor by appointment for the unexpired term of such member" at the beginning of subsection (4); deleted "all to be paid out of the electricians' fund herein created" at the end of subsection (4); and made minor changes in style, punctuation and phraseology.

82A-1602.11. Board of professional engineers and land surveyors—appointment—qualifications—removal—term. (1) There is a board of professional engineers and land surveyors.

(2) The board consists of seven (7) members appointed by the governor. The members are:

(a) Five (5) professional engineers who have been engaged in the practice of engineering for at least twelve (12) years, and who have been in responsible charge of important engineering work for at least five (5) years, or responsible charge of engineering teaching for at least five (5) years. No more than two (2) of these members may be from the same branch of engineering.

(b) Two (2) registered and practicing land surveyors.

(3) Each member shall be a citizen of the United States, and a resident of this state. Each newly appointed member shall have qualifications similar to the member whose term has expired. A member may not serve more than two (2) consecutive terms.

(4) Each member shall serve for a term of five (5) years. The governor may remove a member for misconduct, incompetency, neglect of duty, or for any other sufficient cause.

History: En. Sec. 4, Ch. 150, L. 1957; amd. Sec. 2, Ch. 282, L. 1969; Sec. 66-2327, R. C. M. 1947; amd. and redes. 82A-1602.11 by Sec. 215, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered and rewrote this section. For prior version, see section 66-2327 in the parent volume.

82A-1602.12. Board of hearing aid dispensers—appointment—qualifications—term. (1) There is a board of hearing aid dispensers.

(2) The board consists of five (5) members appointed by the governor. The members are:

(a) One (1) member appointed from a list submitted by the Montana academy of oto-ophthalmology. This member shall hold or be eligible for a certificate of qualification from the American board of otolaryngology.

(b) One (1) member appointed from a list submitted by the Montana speech and hearing association. This member shall hold or be eligible for a certificate of clinical competence in audiology from the American speech and hearing association.

(c) Three (3) members appointed from a list submitted by the Montana hearing aid dealers' society. These members shall have been qualified dispensers and fitters of hearing aids for at least five (5) years before their appointment to the board.

(d) One (1) alternate member shall be appointed from each of the three (3) lists to serve when a regular member cannot attend a scheduled meeting.

(3) Each member shall serve for a term of three (3) years. A member may not be reappointed within one (1) year after the expiration of his second consecutive full term. If a vacancy occurs on the board, the governor shall appoint a person from the same list as the member whose term was not completed.

History: En. Sec. 4, Ch. 204, L. 1969; Sec. 66-3004, R. C. M. 1947; amd. and redes. 82A-1602.12 by Sec. 293, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered and rewrote this section. For prior version, see section 66-3004 in the parent volume.

82A-1602.13. Board of horse racing created—appointment—removal.

(1) There is a board of horse racing.

(2) The board consists of five (5) members, appointed by the governor with the consent of the senate, who shall be citizens, residents and qualified electors of this state. At least one (1) member shall be a breeder of racing horses; one (1) member shall be a member of an independent horse racing association; one (1) member shall be a member of a county fair board that conducts a fair featuring parimutuel betting; and two (2) members shall have occupations unrelated to horse racing.

(3) The governor shall not appoint any member who resides in the same county as a current member. The governor shall appoint members on the basis of experience, qualifications, and a reasonable geographical balance throughout the state.

(4) Each member shall serve for a term of three (3) years. A member may be removed from office by the governor only for cause.

History: En. Sec. 1, Ch. 196, L. 1965; amd. Sec. 1, Ch. 457, L. 1973; Sec. 62-501, R. C. M. 1947; amd. and redes. 82A-1602.13 by Sec. 12, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered this

section; inserted "appointed by the governor with the consent of the senate" in subsection (2); deleted "After January 1, 1974, the governor shall appoint two (2) members for terms to expire in 1977 and one (1) member for a term to expire in 1976. Upon the expiration of the terms of

members the governor shall appoint successors to the board for terms of three (3) years. The senate shall consent and concur in the appointments. This act does not affect the terms of office of the present board" before subsection (3); deleted "Each member shall hold office until his successor is appointed and qualified. Vacancies on the board shall be filled by appointment to be made by the governor for the unexpired term" before subsection

(4); substituted "only for cause" at the end of subsection (4) for "for cause after a public hearing" and deleted "Notice of the hearing shall fix the time and place of hearing and shall specify the charges. Copy of the notice of hearing shall be served on the member by mailing the same to the member at his last known address at least ten (10) days before the date fixed for the hearing"; and made minor changes in style and phraseology.

82A-1602.14. Board of massage therapists—appointment—qualifications—term. (1) There is a board of massage therapists.

(2) The board consists of three (3) members appointed by the governor. Each member shall be a resident of this state, and shall have been a masseur continuously in this state for at least one (1) year. Each member shall have integrity and ability as a masseur.

(3) Each member shall serve for a term of three (3) years.

History: En. Sec. 3, Ch. 302, L. 1967; Sec. 66-2903, R. C. M. 1947; amd. and redcs. 82A-1602.14 by Sec. 284, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered and rewrote this section. For prior version, see section 66-2903 in the parent volume.

82A-1602.15. Montana state board of medical examiners—appointment—qualifications—term—removal. (1) There is a Montana state board of medical examiners.

(2) The board consists of seven (7) members appointed by the governor, with the consent of the senate. Appointments made when the senate is not in session may be confirmed at the next senate session. The members are: six (6) members having the degree of doctor of medicine, and one (1) member having the degree of doctor of osteopathy. The members having the degree of doctor of medicine may not be from the same county. Each member shall be a citizen of the United States. Each member shall have been licensed and shall have practiced medicine in this state for at least five (5) years, and shall have been a resident of this state for at least five (5) years.

(3) Each member shall serve for a term of seven (7) years. A term commences on September 1 of each year of appointment. A member may, upon notice and hearing, be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

History: En. Sec. 4, Ch. 338, L. 1969; amd. Sec. 2, Ch. 203, L. 1971; Sec. 66-1013, R. C. M. 1947; amd. and redcs. 82A-1602.15 by Sec. 92, Ch. 350, L. 1974.

inserted new fifth and sixth sentences, relating to the initial appointment of a doctor of osteopathy.

The 1974 amendment renumbered this section; and deleted much of the original section, relating to the abolishment of the old board, initial terms of office for the new board, vacancies in office, the oath of office, and appointments made when the senate is not in session. For prior version, see parent volume, section 66-1013, and the 1971 amendment note.

Amendments

The 1971 amendment changed the fourth sentence so as to substitute a doctor of osteopathy for one of the seven doctors of medicine; inserted "except for the member having the degree of doctor of osteopathy" before "shall be from the same county" in the fourth sentence; and

82A-1602.16 REORGANIZATION OF EXECUTIVE DEPARTMENT

82A-1602.16. Board of morticians—appointment—qualifications—term.

(1) There is a board of morticians.

(2) The board consists of five (5) members appointed by the governor, with the consent of the senate. Each member shall be a licensed mortician.

(3) Each member shall serve for a term of five (5) years.

History: En. Sec. 2, Ch. 41, L. 1963; Sec. 66-2702, R. C. M. 1947; amd. and redes. 82A-1602.16 by Sec. 261, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered this

section; deleted the former last three sentences relating to initial terms and replacement appointments (see parent volume, section 66-2702); added subsection (3); and made minor changes in phraseology.

82A-1602.17. Board of nursing home administrators—appointment—qualifications—term—removal. (1) There is a board of nursing home administrators.

(2) The board consists of five (5) voting members appointed by the governor. No more than two (2) members shall be nursing home administrators. The other three (3) members shall be representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients. No two (2) of the latter shall be from the same profession and none may have a financial interest in a nursing home.

(3) The director of the department of health and environmental sciences, or his designee, and the director of the department of social and rehabilitation services, or his designee, are ex officio, nonvoting members of the board.

(4) The appointees shall be selected from a list of three (3) nominees submitted for each appointee by the board of directors of the Montana nursing home association, inc.

(5) Each appointed member shall serve for a term of five (5) years. Any vacancy occurring in the position of an appointive member shall be filled by the governor for the unexpired term from a list of three (3) names submitted by the board of directors of the Montana nursing home association, inc.

(6) Appointive members may be removed by the governor only for cause.

History: En. Sec. 2, Ch. 363, L. 1969; amd. Sec. 1, Ch. 434, L. 1973; amd. Sec. 2, Ch. 483, L. 1973; amd. Sec. 1, Ch. 153, L. 1974; Sec. 66-3102, R. C. M. 1947; amd. and redes. 82A-1602.17 by Sec. 306, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered this section; organized and designated the subsections; added "appointed by the governor" in the first sentence of subsection (2); increased the term of an appointive

member from three to five years; deleted "and they shall serve staggered terms with no more than two (2) terms expiring each year" at the end of the first sentence of subsection (5); substituted "only for cause" at the end of subsection (6) for "for cause after due notice and hearing"; deleted a final sentence which read "No person shall be eligible for appointment as a nursing home administrator member unless he is the holder of a license as a nursing home administrator"; and made minor changes in phraseology.

82A-1602.18. Board of nursing—appointment—qualifications—term—removal. (1) There is a board of nursing.

(2) The board consists of eight (8) members appointed by the governor. The members are:

(a) Five (5) registered professional nurses which constitute the board—professional nursing administration. Each member shall: (i) be a graduate of an approved school of nursing; (ii) be a licensed nurse in this state; (iii) have had at least five (5) years' experience in nursing following graduation; and (iv) have been actively engaged in nursing for at least three (3) years immediately before appointment. At least three (3) members shall have had at least three (3) years in administrative, teaching, or supervisory experience in schools of nursing.

(b) Three (3) practical nurses which constitute the board—practical nursing administration. Each member shall: (i) be a graduate of a school of practical nursing; (ii) be a licensed practical nurse in this state; (iii) have had at least three (3) years' experience as a practical nurse; and (iv) have been actively engaged in the practice of practical nursing for at least two (2) years immediately before appointment.

(3) All members shall have been residents of this state for at least one (1) year before appointment, and be citizens of the United States.

(4) All members shall serve for a term of five (5) years, and a member may not be appointed for more than two (2) consecutive terms. The governor may remove a member from the board for neglect of a duty required by law, or for incompetency, or unprofessional or dishonorable conduct.

History: En. 82A-1602.18 by Sec. 357,
Ch. 350, L. 1974.

82A-1602.19. Board of optometrists — appointment — qualifications — term. (1) There is a board of optometrists.

(2) The board consists of three (3) members appointed by the governor. Each member shall be a registered optometrist of this state and actually engaged in the exclusive practice of optometry in this state during his term of office.

(3) Each member shall serve for a term of six (6) years.

History: En. 82A-1602.19 by Sec. 358,
Ch. 350, L. 1974.

82A-1602.20. Board of osteopathic physicians—appointment—qualifications—term. (1) There is a board of osteopathic physicians.

(2) The board consists of three (3) members appointed by the governor. Each member shall be a qualified practicing resident osteopath and a graduate of a legally authorized school of osteopathy.

(3) Each member shall serve for a term of four (4) years.

History: En. Sec. 1, p. 48, L. 1901; rep. and re-en. Sec. 1, Ch. 51, L. 1905; re-en. Sec. 1594, Rev. C. 1907; re-en. Sec. 3125, R. C. M. 1921; Sec. 66-1401, R. C. M. 1947; amd. and redes. 82A-1602.20 by Sec. 140, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered this section; and rewrote it to reflect the new name of the board and to delete material relating to terms of office on the original board. For prior version, see section 66-1401 in the parent volume.

82A-1602.21 REORGANIZATION OF EXECUTIVE DEPARTMENT

82A-1602.21. Board of pharmacists—appointment—qualifications—term.

(1) There is a board of pharmacists.

(2) The board consists of three (3) members appointed by the governor. The governor shall appoint the members from a list submitted annually by the Montana state pharmaceutical association. The list shall contain the names of five (5) qualified persons for each appointment. Each member shall be a graduate of the college of pharmacy of the university of Montana, or of a college or school of pharmacy recognized and approved by, or a member of, the American association of colleges of pharmacy. Each member shall have at least five (5) consecutive years of practical experience as a pharmacist immediately before his appointment. However, one (1) member may be a registered pharmacist of fifteen (15) years' practical experience and actually engaged in the practice of pharmacy. A member who, during his term of office, ceases to be actively engaged in the practice of pharmacy in this state, shall be automatically disqualified from membership on the board.

(3) Each member shall serve for a term of three (3) years. A member shall be removed from office by the governor on proof of malfeasance or misfeasance in office, after reasonable notice of charges against him and after a hearing.

History: En. Sec. 643, Pol. C. 1895; re-en. Sec. 1625, Rev. C. 1907; re-en. Sec. 4, Ch. 134, L. 1915; re-en. Sec. 3173, R. C. M. 1921; amd. Sec. 3, Ch. 175, L. 1939; Sec. 66-1503, R. C. M. 1947; amd. and redes. 82A-1602.21 by Sec. 149, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered and rewrote this section. For prior version, see section 66-1503 in the parent volume.

82A-1602.22. Board of plumbers — appointment — qualifications—term.

(1) There is a board of plumbers.

(2) The board consists of seven (7) members appointed by the governor. The members are:

(a) Two (2) master plumbers and two (2) journeyman plumbers who are at least eighteen (18) years old, who have been residents of this state for more than one (1) year, and who have been at least five (5) out of the last eight (8) years immediately preceding their appointment, duly licensed master or journeyman plumbers;

(b) One (1) registered professional engineer, qualified in mechanical engineering;

(c) One (1) representative of the public who is not engaged in the business of installing or selling plumbing equipment;

(d) One (1) appointed representative of the department of health and environmental sciences, who shall be a sanitary engineer and who is secretary of the board.

(3) The appointed members of the board shall serve for a term of four (4) years.

History: En. 82A-1602.22 by Sec. 359, Ch. 350, L. 1974.

82A-1602.23. Board of real estate—appointment—qualifications—term.

(1) There is a board of real estate.

(2) The board consists of five (5) members. The members are the director of agriculture, who is the chairman of the board, and four (4) members appointed by the governor. The four (4) appointed members shall:

(a) Be residents of this state. At least two (2) members shall be active and licensed real estate brokers and have been actively engaged in the real estate business as a broker in this state for not less than five (5) continuous years before appointment.

(b) Be appointed so not more than two (2) are from the same congressional district, with no more than one (1) eligible real estate broker from the same congressional district. If a member takes up residence in a district different from the one in which he resided at the time of appointment, he vacates his membership on the board.

(c) Be appointed, in the event of a vacancy, by appointing a resident from the same district as the member whose office has been vacated.

(3) Not more than three (3) members, including the chairman, shall be from the same political party.

(4) The four (4) appointed members shall serve for a term of four (4) years.

History: En. 82A-1602.23 by Sec. 360,
Ch. 350, L. 1974.

82A-1602.24. Board of veterinarians — appointment — qualifications — term—removal. (1) There is a board of veterinarians.

(2) The board consists of five (5) members appointed by the governor. The Montana state veterinary medical association shall, at each annual meeting, nominate twice the number of board members to be appointed that year. The names of these nominees shall be annually transmitted, under seal, to the governor before July 1. The governor shall, before August 1, appoint from this list the board members to fill the vacancies that will occur July 31. If no nominee has the required qualifications to be on the board, the governor may appoint any licensed and registered veterinarian.

(3) Each member shall be a reputable licensed veterinarian who has graduated from a college authorized by law to confer degrees, and have educational standards equal to those approved by the American veterinary medical association. Each member shall have actually and legally practiced veterinary medicine in either private practice or public service in this state for at least five (5) years immediately before his appointment.

(4) Each member shall serve for a term of five (5) years. The governor may, after notice and hearing, remove a member for misconduct, incapacity, or neglect of duty.

History: En. Sec. 1, Ch. 82, L. 1913;
re-en. Sec. 3217, R. C. M. 1921; amd. Sec.
1, Ch. 90, L. 1955; Sec. 66-2201, R. C. M.
1947; amd. and redes. 82A-1602.24 by
Sec. 204, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered and rewrote this section. For prior version, see section 66-2201 in the parent volume.

82A-1602.26. Board of water well contractors—appointment—qualifications—term. (1) There is a board of water well contractors.

(2) The board consists of five (5) voting members. The members are:

(a) One (1) hydrogeologist appointed by the director of the Montana bureau of mines and geology;

(b) One (1) appointed by the director of natural resources and conservation;

(c) One (1) appointed by the director of health and environmental sciences;

(d) Two (2) licensed water well contractors appointed by the governor with the consent of the senate. These members shall have been residents of this state for a least three (3) years before appointment, and shall have had at last five (5) years' experience in the water well drilling business.

(3) The appointed members shall serve for a term of three (3) years. In case of a vacancy in the office of a member of the board, an appointment shall be made to fill the same in the manner prescribed by the constitution and laws of this state.

(4) The members of the board shall, upon entering on the duties of his office, take and subscribe to the oath specified in the constitution of the state of Montana, and such oath shall be filed in the office of the secretary of state of the state of Montana.

(5) The board shall have a seal with the words engraved thereon: "Water Well Contractor's Examining Board," and such seal shall be affixed to all writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of such seal.

(6) The board may, in its discretion, employ a secretary and such other persons as may be necessary to perform the duties of the board, either upon a part-time basis or upon a full-time basis. Each appointed member of the board who is not a government employee shall receive, as compensation for his services, the sum of twenty dollars (\$20) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and per diem expenses as provided by law. The state engineer and the director of environmental sanitation of the state board of health of the state of Montana shall receive no extra compensation for their services as members of the board.

History: En. 82A-1602.26 by Sec. 3, Ch. 232, L. 1974; Sec. 361, Ch. 350, L. 1974.

Compiler's Notes

This section was enacted by Chapter 232 and Chapter 350, Laws of 1974. The enact-

ments do not contain identical language, but the differences are minor and since they do not appear to conflict, the compiler has printed the section as enacted by Chapter 350.

82A-1602.27. Board of psychologists — appointment — qualifications — term. (1) There is a board of psychologists.

(2) The board consists of three (3) members appointed by the governor. The governor shall appoint all members, including a member filling a vacancy for an unexpired term, from the list of licensed psychologists in this state. A member may not succeed himself, but may be reappointed

after three (3) years following the termination of his previous appointment. Each member shall be a citizen of the United States, and a resident of this state.

(3) Each member shall serve for a term of three (3) years.

History: En. Sec. 4, Ch. 73, L. 1971; Sec. 66-3204, R. C. M. 1947; amd. and redes. 82A-1602.27 by Sec. 314, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered and rewrote this section. Prior to amendment, it read: "The state board of psychologist examiners is established to administer this act.

"(1) The board shall consist of three psychologists who shall be appointed by the governor within ninety (90) days after this act takes effect. The governor shall select his appointees for this first board from a list submitted to him by the Montana Psychological Association, consisting of the names of all members of the Montana Psychological Association who are currently certified by its board of examiners and who are also members of the American Psychological Association and who hold the Ph.D. degree.

"(2) The members of the first board shall serve the following terms: one (1) member for one (1) year, one (1) member for two (2) years, and one (1) member

for three (3) years. Thereafter, at the expiration of the term of each member, the governor shall appoint his successor for a term of three (3) years from the list of licensed psychologists.

"(3) Before entering upon the duties of his office, each member of the board shall take the constitutional oath of office and file it with the secretary of state. Each member of the board first appointed under this act shall be issued a license upon payment of the appropriate fee.

"(4) No member of the board may be appointed to succeed himself, but any member may be reappointed after a period of three (3) years following the termination of a previous appointment.

"(5) Each member of the board shall be a citizen of the United States and a resident of Montana.

"(6) Any vacancy in the membership of the board occurring other than by expiration of term, shall be filled by appointment by the governor for the unexpired term, from a current list similar to the one submitted to him under subsection (2) hereof."

82A-1603. Department—duties. In addition to the provisions of section 82A-108 of this act, the department shall:

(1) Provide all the administrative and clerical services needed by the boards within the department, including corresponding, taking applications for licenses, issuing licenses granted by the boards, renewing licenses, registering, taking minutes of board meetings and hearings, and filing.

(2) Standardize and keep in Helena all official records of the boards.

(3) Make arrangements and provide facilities in Helena for the meetings, hearings, and examinations of each board, or elsewhere in the state if requested by the board.

(4) Administer and grade examinations required by each board or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination.

(5) At the request of a board, investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department.

(6) Assess the costs of the department to the boards on a prorata basis according to the number of man days and the actual operating costs of the department for each board.

History: En. 82A-1603 by Sec. 1, Ch. 272, L. 1971.

82A-1604. Director—duties. In addition to his powers and duties under sections 82A-107 and 82A-108 of this act, the director shall:

(1) Appoint impartial legal counsel to conduct hearings before each board within the department whenever any board holds a hearing. The legal counsel appointed shall see that hearings are conducted in a proper and legal manner.

(2) Whenever the department conducts an investigation of a complaint of illegal or unethical conduct of a member of a particular profession or occupation as prescribed in section 82A-1603(5) of this chapter, and if requested by the appropriate board, appoint an impartial member of that profession or occupation to assist the department in its investigation. The member so appointed may not be a member of the board having jurisdiction over the particular profession or occupation.

(3) Hire all personnel to perform the administrative and clerical functions of the department for the boards. Boards within the department have no authority to hire personnel.

History: En. 82A-1604 by Sec. 1, Ch. 272, L. 1971.

82A-1605. Boards within department—duties. Except for the inspection and code-making functions of the state electrical board transferred to the department of justice and enumerated in chapter 12 of this act, and subject to the administrative control of the department and the director of professional and occupational licensing as set forth in section 82A-108 of this act and under this chapter, each agency transferred to the department shall continue to exercise its prescribed statutory functions. In addition, each board within the department shall:

(1) Set and enforce standards, rules, and regulations governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction.

(2) Sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings shall be conducted by the legal counsel appointed under section 82A-1604(1) of this chapter.

(3) Pay to the department its pro rata share of the assessed costs of the department under section 82A-1603(6).

History: En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973.

Amendments

The 1973 amendment substituted "justice" for "law enforcement and public safety" near the beginning of the section.

82A-1606. Board within department—composition, etc. The members of boards within the department before the effective date of this chapter continue as members for the remainder of their terms. The composition, qualifications, method of appointment, terms of office, compensation, and reimbursement of the members of the boards within the department remain as prescribed by law, except:

(1) The executive officer of the Montana state department of health, or his designee, and the administrator of the Montana state department of public welfare, or his designee, are replaced by the director of the

department of health and environmental sciences, or his designee, and the director of the department of social and rehabilitation services, or his designee, respectively, on the Montana state board of examiners for nursing home administrators, renamed the board of nursing home administrators in this chapter.

(2) The appointed representative of the state board of health is replaced by the appointed representative of the department of health and environmental sciences on the board of plumbing examiners, renamed the board of plumbers in this chapter.

(3) The director of the division of environmental sanitation or a qualified member of his staff appointed by the director is replaced by the administrator of the division of environmental sciences of the department of health and environmental sciences or a qualified member of his staff appointed by the administrator on the board of certification for water and waste water operators, renamed the board of water and waste water operators in this chapter.

(4) The state engineer and the director of the division of environmental sanitation of the state board of health are replaced by the appointee of the director of the department of natural resources and conservation and the appointee of the director of the department of health and environmental sciences, respectively, on the water well contractors' examining board of the state of Montana, renamed the board of water-well contractors in this chapter.

History: En. 82A-1606 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 6, Ch. 232, L. 1974.

Amendments

The 1974 amendment substituted "appointee of the director" twice in subdi-

vision (4), once for "administrator of the division of water resources" after "replaced by the" and once for "administrator of the division of environmental sciences" after "natural resources and conservation and the."

82A-1607. Electrical inspections and code making. The functions of the department of law enforcement and public safety of making inspections of electrical installations and issuing tags and charging fees therefor as set forth in section 66-2805(c)(i) and of establishing an electrical code as set forth in section 66-2802(i), which were transferred to the department in section 82A-1203, are transferred to the department of professional and occupational licensing and the board of electricians, subject to the provisions of this act.

History: En. 82A-1607 by Sec. 1, Ch. 87, L. 1973.

professional and occupational licensing, and providing an effective date.

Title of Act

An act transferring the functions of the department of law enforcement and public safety pertaining to electrical inspections and code making to the department of pro-

Effective Date

Section 2 of Ch. 87, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 3, 1973.

CHAPTER 17—DEPARTMENT OF PUBLIC SERVICE REGULATION

Section

82A-1701. Department of public service regulation—creation—head.

82A-1702. Public service commission—continued—composition.

82A-1701 REORGANIZATION OF EXECUTIVE DEPARTMENT

82A-1704. Name changes.
82A-1705. Name changes.
82A-1706. Name changes.

82A-1701. Department of public service regulation—creation—head. There is created a department of public service regulation. The department head is the public service commission provided for in section 82A-1702 of this chapter.

History: En. 82A-1701 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 5-71, dated Sept. 9, 1971, effective Sept. 9, 1971.

82A-1702. Public service commission—continued—composition. (1) The public service commission, created in Title 70, chapter 1, R. C. M. 1947, and its functions are continued.

(2) The composition, method of selection, and terms of office of members of the commission remain as prescribed in section 72-101, R. C. M. 1947. Members of the board of railroad commissioners ex officio public service commission before the effective date of this chapter continue as members of the public service commission for the remainder of their terms.

History: En. 82A-1702 by Sec. 1, Ch. 272, L. 1971.

82A-1703. Repealed.

Repeal

Section 82A-1703 (Sec. 1, Ch. 272, L. 1971), relating to the abolishment of the board of railroad commissioners and trans-

fer of its functions to the public service commission, was repealed by Sec. 24, Ch. 315, Laws of 1974.

82A-1704. Name changes. Wherever the words "board of railroad commissioners," "board," "Montana railroad commission," "board of railroad commissioners of the state of Montana," "board of railroad commissioners of Montana," "railroad commissioners," "railroad commission," and "railroad commission of the state of Montana" appear in sections 8-103, 8-103.1, 8-103.3, 8-111.1, 8-114, 8-127, 8-129, 8-131, 8-202, 8-203, 8-204, 8-205, 8-206, 8-207, 8-209, 8-210, 72-117, 72-121, 72-126, 72-127, 72-133, 72-134, 72-135, 72-142, 72-145, 72-146, 72-147, 72-150, 72-151, 72-152, 72-156, 72-158, 72-159, 72-160, 72-162, 72-163, 72-164, 72-165, 72-166, 72-167, 72-168, 72-662, 72-664, 72-704, 72-705, 72-706, 72-707, 72-708, 72-709, 72-711, R. C. M. 1947, the word "commission" is substituted therefor.

History: En. 82A-1704 by Sec. 20, Ch. 315, L. 1974.

82A-1705. Name changes. Wherever the words "Montana railroad and public service commission," "railroad commissioners," "board of railroad commissioners," "board of railroad commissioners of the state of Montana," and "railroad commission of this state," appear in sections 11-1019, 11-1021,

72-627, 72-703, 88-207, 89-605, R. C. M. 1947, the words "public service commission" are substituted therefor.

History: En. 82A-1705 by Sec. 21, Ch. 315, L. 1974.

82A-1706. Name changes. Wherever the words "railroad commissioners," "railroad and public service commissioners," and "railroad commissioner" appear in sections 23-3313, 23-3314, 23-3513, 25-501, 59-538, R. C. M. 1947, the words "public service commissioners" are substituted therefor.

History: En. 82A-1706 by Sec. 22, Ch. 315, L. 1974.

of sections of the Revised Codes in either supplements to or replacement volumes for the Revised Codes."

Instructions to Publishers

Section 23 of Ch. 315, Laws 1974 read: "The publishers of the Revised Codes of Montana, 1947, are directed, under the supervision of the supreme court of Montana, to make the substitutions enumerated in sections 20, 21, and 22 of this act, when reprinting sections or portions

Repealing Clause

Section 24 of Ch. 315, Laws 1974 read "Sections 8-115, 8-117, 8-120, 19-117, 19-118, 70-102, 70-118, 72-102, 72-104, 72-111, 72-141, 72-631 through 72-634, 82A-1703, R. C. M. 1947, are repealed."

CHAPTER 18—DEPARTMENT OF REVENUE

Section

- 82A-1801. Department of revenue—creation—head.
- 82A-1802. Additional functions transferred to department.
- 82A-1803. Advisory council for multi-state tax compact.
- 82A-1804. Director of revenue—creation.
- 82A-1806. Multistate tax compact advisory committee abolished.
- 82A-1807. Liquor control board abolished—functions transferred.
- 82A-1808. State tax appeal board—appeals concerning liquor and beer laws.

82A-1801. Department of revenue—creation—head. There is created a department of revenue. The department head is the director of revenue.

History: En. 82A-1801 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 62, Ch. 391, L. 1973.

equalization provided for in article XII, section 15 of the Montana constitution" at the end of the section.

Amendments

The 1973 amendment substituted "director of revenue" for "state board of

Executive Implementation

This chapter was implemented by Executive Reorganization Order 3-71, dated Aug. 4, 1971, effective Aug. 9, 1971.

82A-1802. Additional functions transferred to department. The functions of the secretary of state, which are contained in section 14-528, R. C. M. 1947 (pertaining to rural electric and telephone cooperatives license tax), are transferred to the department. Unless inconsistent with this act, any reference to the secretary of state in section 14-528, R. C. M. 1947, means the department of revenue.

History: En. 82A-1802 by Sec. 1, Ch. 272, L. 1971.

82A-1803. Advisory council for multi-state tax compact. The director of revenue shall appoint an advisory council for the purpose of complying with article VI, section 1(b) of the multi-state tax compact, section 84-6701, R. C. M. 1947. The council shall be appointed in accordance with the provisions of section 82A-110 of this act.

History: En. 82A-1803 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 63, Ch. 391, L. 1973.

Amendments

The 1973 amendment deleted former sub-

section (1) which continued the functions of the board of equalization; and substituted "director of revenue" for "board" at the beginning of the section.

82A-1804. Director of revenue—creation. (1) There is created the position of director of revenue.

(2) The director is the chief administrative officer of the department and in addition shall prepare revenue estimates of state revenue from all sources and shall continuously study fiscal problems and tax structures of state and local governments and submit the studies to the governor and legislative assembly at their request.

(3) The director of revenue shall be appointed and serve as provided for directors in section 82A-106 of this act.

History: En. 82A-1804 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 64, Ch. 391, L. 1973.

Amendments

The 1973 amendment deleted "under the

direction of the state board of equalization and he shall perform those functions that are delegated to him by the board" following "chief administrative officer of the department."

82A-1805. Repealed.

Repeal

Section 82A-1805 (Sec. 1, Ch. 272, L. 1971), relating to the Montana liquor con-

trol board, was repealed by Sec. 3, Ch. 207, Laws 1973.

82A-1806. Multistate tax compact advisory committee abolished. The multistate tax compact advisory committee, provided for in section 84-6704, R. C. M. 1947, is abolished.

History: En. 82A-1806 by Sec. 1, Ch. 272, L. 1971.

82A-1807. Liquor control board abolished—functions transferred. The Montana liquor control board, created in Title 4, chapter 1, is abolished, and its functions are transferred to the department of revenue. Unless inconsistent with this title, any reference in the Revised Codes of Montana, 1947, to the Montana liquor control board means the department of revenue.

History: En. 82A-1807 by Sec. 1, Ch. 207, L. 1973.

Title of Act

An act abolishing the liquor control

board and transferring its functions to the department of revenue and board of equalization; repealing section 82A-1805, R. C. M. 1947; and providing an effective date.

82A-1808. State tax appeal board—appeals concerning liquor and beer laws. Any interested party shall have the right to appeal any decision of the department of revenue concerning the issuance, transfer, suspension or revocation of beer or liquor licenses to the state tax appeal board. The appeal shall be heard in conformity with the provisions of the Montana Administrative Procedure Act [82-4201 to 82-4225] and the decision of the state tax appeal board shall be final unless reversed or modified upon judicial review.

History: En. 82A-1808 by Sec. 2, Ch. 207, L. 1973; en. 82A-1808 by Sec. 64.1, Ch. 391, L. 1973.

Compiler's Notes

Chapter 207 and Chapter 391, Laws of 1973, both enacted sections numbered 82A-1808. The language of the two enactments is identical except that Ch. 391, the later enactment, substituted "state tax appeals board" for "state board of equalization." The language of Ch. 391 is used above.

Title of Act

An act to amend sections 4-354, 7-122, 15-2285, 15-22-112, 16-910, 16-2010, 16-3706, 16-3912, 16-3916, 25-605, 25-609, 32-2607, 32-3804, 50-1032, 50-1220, 51-303, 53-703, 53-1013, 53-1025, 59-1109, 59-1110, 66-223, 66-227, 67-2211, 67-2212, 67-2213, 67-2214, 67-2215, 67-2216, 67-2217, 67-2218, 67-2219, 67-2220, 67-2221, 67-2222, 67-2223, 67-2224, 67-2225, 67-2226, 67-2317, 67-2318, 67-2340, 67-2342, 69-3502, 69-3504, 69-3504.1, 69-3923, 69-6007, 71-236, 75-6410.1, 75-6711, 81-928, 81-930, 81-1115, 81-1116, 81-1117, 81-1118, 82-1501, 82-1506, 82-1512, 82-1925.1, 82A-1801, 82A-1803, 82A-1804, 82A-1808, 89-1812, 89-2401, 91-502, 91-504, 91-505, 91-506, 91-507, 91-508, 91-509, 91-523, 91-4321, 91-4414.1, 91-4415, 91-4418, 91-4419, 91-4421, 91-4423, 91-4425, 91-4426, 91-4427, 91-4428,

91-4429, 91-4430, 91-4431, 91-4437, 91-4438, 91-4439, 91-4440, 91-4442, 91-4443, 91-4444, 91-4445, 91-4446, 91-4447, 91-4448, 91-4449, 91-4450, 91-4451, 91-4454, 91-4455, 91-4459, 91-4460, 91-4461, 91-4462, 91-4463, 91-4464, 94-1506, and 94-35-260, R. C. M. 1947, to provide for a general revision of the tax laws of Montana to implement article VIII, sections 3 and 7 of the 1972 Montana constitution by designating the state department of revenue as the tax administration agency for the state of Montana, by replacing the state board of equalization with a state tax appeal board, or liquor control board, by designating county assessors as agents of the state department of revenue, and by providing for county tax appeal boards; and to repeal sections 16-1016, 16-3703, and 91-4466, R. C. M. 1947.

Repealing Clause

Section 3 of Ch. 207, Laws 1973 read "Section 82A-1805, R. C. M. 1947, is repealed."

Effective Date

Section 4 of Ch. 207, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

CHAPTER 19—DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Section

- 82A-1901. Department of social and rehabilitation services—creation—head.
 82A-1901.1. Functions of department.
 82A-1905. Board of veterans' affairs—composition—qualifications—term—allocated.
 82A-1906. Board of social and rehabilitation appeals—creation—allocation—composition—functions—designation.

82A-1901. Department of social and rehabilitation services—creation—head. There is created a department of social and rehabilitation services. The department head is a director of social and rehabilitation services appointed by the governor in accordance with section 82A-106 of this act.

History: En. 82A-1901 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 6-71, dated Oct. 28, 1971, effective Nov. 1, 1971.

82A-1901.1. Functions of department. The department and its units are responsible for administering laws pertaining to public assistance, including, but not limited to:

- (1) Dependent and neglected children (Title 10, chapter [13]);
- (2) Child adoption agencies (Title 10, chapter 7);
- (3) Day care facilities for children (Title 10, chapter 8);
- (4) Adoptions (Title 61, chapter 2);

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- (5) County poor (Title 71, chapter 1);
- (6) Department's functions and county departments of public welfare (Title 71, chapter 2);
- (7) General relief (Title 71, chapter 3);
- (8) Old-age assistance (Title 71, chapter 4);
- (9) Aid to dependent children (Title 71, chapter 5);
- (10) Aid to blind (Title 71, chapter 6) [Repealed];
- (11) Child welfare (Title 71, chapter 7);
- (12) Disabled persons (Title 71, chapter 12) [Repealed];
- (13) Services to the blind (Title 71, chapter 14);
- (14) Medical assistance (Title 71, chapter 15);
- (15) Vocational rehabilitation and education (Title 71, chapter [21]);
- (16) Veterans' welfare (Title 71, chapter [22]);
- (17) Problems of aging (Title 71, chapter [23]).

History: En. 82A-1901.1 by Sec. 45, Ch. 121, L. 1974.

Compiler's Notes

Sections 10-501 to 10-519, pertaining to dependent and neglected children, were repealed by Sec. 13, Ch. 328, Laws of 1974; section 10-505 also was repealed by Sec. 52, Ch. 121, Laws of 1974. Sections 10-520 to 10-525, pertaining to foster or boarding homes, were transferred to sections 10-1316 to 10-1321 by Sec. 14, Ch.

328, Laws of 1974. Sections 71-401 to 71-411 and 71-413, pertaining to old-age assistance, were repealed by Sec. 1, Ch. 210, Laws of 1974. Sections 71-601 to 71-607 and 71-609 to 71-614, relating to aid to the blind, were repealed by Sec. 1, Ch. 210, Laws of 1974; section 71-603 also was repealed by Sec. 52, Ch. 121, Laws of 1974. Sections 71-1201 to 71-1210, relating to aid to the permanently and totally disabled, were repealed by Sec. 1, Ch. 210, Laws of 1974.

82A-1902 to 82A-1904. Repealed.

Repeal

Sections 82A-1902 to 82A-1904 (Sec. 1, Ch. 272, L. 1971), relating to abolishment of the state department of public welfare

and transfer of functions to the board of social and rehabilitation appeals, were repealed by Sec. 52, Ch. 121, Laws of 1974.

82A-1905. Board of veterans' affairs—composition—qualifications—term—allocated. (1) There is a board of veterans' affairs.

(2) The board consists of five (5) members appointed by the governor. Not more than one (1) member shall be appointed from a single county. However, a change of residence within the state after appointment does not alter a member's status. All members shall be residents of this state, and shall have been honorably discharged from service in the military forces of the United States in any of its wars. A vacancy occurring on the board shall be filled by the governor, subject to the conditions of this subsection.

(3) Each member shall serve for a term of five (5) years.

(4) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.

History: En. 82A-1905 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 46, Ch. 121, L. 1974.

Amendments

The 1974 amendment rewrote this section, which provided for continuation of the veterans' welfare commission under

the name of board of veterans' affairs; transferred the board to the department of social and rehabilitation services for administrative purposes; provided that present members should serve the remainder of their terms; provided that composition, method of appointment, terms of office, and qualifications of members re-

main as prescribed under section 77-1001; and provided that members should be compensated and reimbursed as are members of advisory councils under section 82A-110.

Repealing Clause

Section 52 of Ch. 121, Laws 1974 read "Sections 10-505, 41-802, 41-804, 41-807, 41-809, 41-811, 41-814, 41-815, 71-201 through 71-206, 71-208, 71-209, 71-220, 71-224, 71-225, 71-232, 71-310, 71-603, 71-707, 71-801, 71-902 through 71-904, 71-1101 through 71-1107, 71-1402, 71-1403, 71-1410 through 71-1415, 71-1513, 71-1523, 77-1001, 77-1008, 77-1011, 82-3501 through 82-3503, 82A-1902 through 82A-1904, 82A-1907, and 82A-1908, R. C. M. 1947, are repealed."

Instructions to Publishers

Section 47 of Ch. 121, Laws of 1974 read "Wherever the words 'state bureau of child and animal protection,' 'division of child welfare services of the state department of public welfare,' 'division of child welfare service,' 'bureau of child protection,' 'division of child welfare services of the state department of public welfare,' or 'state department of public welfare' appear in sections 10-503, 10-504, 10-519, 10-521, 10-522, and 71-1511, R. C. M. 1947, the words 'state department of social and rehabilitation services' are substituted therefor."

Section 48 of Ch. 121, Laws of 1974 read "Wherever the words 'state department of public welfare,' 'department of public welfare,' or 'state department of welfare' appear in sections 10-507, 10-524, 61-205, 61-208, 61-209, 61-211, 71-1511, 93-

2601-57, and 93-2601-78, R. C. M. 1947, the words 'state department of social and rehabilitation services' are substituted therefor."

Section 49 of Ch. 121, Laws of 1974 read "Wherever the words 'state department of public welfare,' 'department of public welfare,' 'state public welfare department,' 'state board of public welfare,' 'board of public welfare,' 'board,' 'state board,' 'state welfare board,' 'state administrator,' 'administrator,' or 'supervisor' appear in sections 10-703, 10-704, 10-705, 10-802, 10-808, 10-809, 71-207, 71-230, 71-234, 71-236, 71-237, 71-239, 71-240, 71-247, 71-250, 71-404, 71-412, 71-509, 71-606, 71-706, 71-901, 71-1202, 71-1205, 71-1406, 71-1408, 71-1409, and 71-1515, R. C. M. 1947, the words 'state department' are substituted therefor."

Section 50 of Ch. 121, Laws of 1974 read "Wherever the words 'state board,' 'state department of public welfare,' 'state board of public welfare,' or 'state administrator,' appear in sections 71-216, 71-217, 71-227, 71-233, 71-242, 71-311, 71-401, 71-503, 71-602, and 71-1201, R. C. M. 1947, the words 'state department' are substituted therefor."

Section 51 of Ch. 121, Laws of 1974 read "The publishers of the Revised Codes of Montana, 1947, are directed, under the supervision of the supreme court of Montana, to make the substitutions enumerated in sections 47, 48, 49, and 50 of this act, when reprinting sections or portions of sections of the Revised Codes in either supplements to or replacement volumes for the Revised Codes."

82A-1906. Board of social and rehabilitation appeals—creation—allocation—composition—functions—designation. (1) There is created a board of social and rehabilitation appeals.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board consists of three (3) members, appointed by the governor as prescribed in section 82A-112 of this act, as follows:

(a) The director of the department, who shall act as chairman of the board. The director does not have a term on the board as a board member, but shall serve at the pleasure of the governor.

(b) Two members of the general public.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act. For purposes of that section, a majority shall be considered as one (1).

History: En. 82A-1906 by Sec. 1, Ch. 272, L. 1971.

outfitters residing in that district by election at an annual meeting of the outfitters to be held in the district headquarters at 1:00 p.m. on the second Friday of March. A majority vote of all the outfitters in attendance at the meeting shall determine the member from the district. At the election an alternate member shall also be elected to serve if the first elected member is unable to act.

(3) The members shall serve staggered three (3) year terms and take office on the day they are elected.

(4) The council is allocated to the department.

(5) The council is not subject to the provisions of section 82A-110.

History: En. 82A-2005 by Sec. 57, Ch. 69-6611, 69-6612, 69-6613, 69-6614, the word 511, L. 1973; amd. Sec. 1, Ch. 63, L. 1974. 'department' is substituted therefor."

Amendments

The 1974 amendment deleted subdivision (a) from the end of the section, which read "Wherever the words 'Montana aerial tramway safety board,' 'passenger tramway safety board,' or 'board' appear in sections 69-6601, 69-6605, 69-6606, 69-6607, 69-6608, 69-6609, 69-6610,

Repealing Clause

Section 58 of Ch. 511, Law 1973 read "Sections 26-101, 26-102, 26-104.2, 26-105, 26-105.1, 26-106.1, 26-106.2, 26-116, 26-120, 26-209, 26-224, 26-905, 26-910, 62-309, 62-404, 69-6603, 69-6604, 82A-217, 82A-2002, R. C. M. 1947, are repealed."

CHAPTER 21—MISCELLANEOUS TRANSFERS

Section

82A-2101. Federal-state co-ordinator transferred to governor's office.

82A-2102. Board of state canvassers transferred to secretary of state.

82A-2101. Federal-state co-ordinator transferred to governor's office. The office of the federal-state co-ordinator, administratively created, is transferred to the office of the governor.

History: En. 82A-2101 by Sec. 1, Ch. 272, L. 1971.

82A-2102. Board of state canvassers transferred to secretary of state. The board of state canvassers, created in section 23-4016, R. C. M. 1947, is transferred to the office of the secretary of state.

History: En. 82A-2102 by Sec. 1, Ch. 272, L. 1971.

Repealing Clause

Section 2 of Ch. 272, Laws 1971 read "Section 27-427, R. C. M. 1947, is repealed."

82A-2103. Repealed.

Repeal

Section 82A-2103 (Sec. 1, Ch. 272, L. 1971), relating to the state board of hail

insurance, was repealed by Sec. 2, Ch. 395, Laws 1973. For present law, see sec. 82A-304.1.

TITLE 83—STATE SOVEREIGNTY AND JURISDICTION

Chapter

1. Sovereignty and territorial jurisdiction of the state, 83-108, 83-109, 83-114.
7. Tort actions against state, 83-701, 83-706.1.
9. Assignment of claims against state, 83-901 to 83-904.

CHAPTER 1—SOVEREIGNTY AND TERRITORIAL JURISDICTION OF THE STATE

Section

- 83-108. Jurisdiction over lands purchased by United States.
- 83-109. Concurrent jurisdiction over Fort Peck dam ceded to United States—reservation of rights to state.
- 83-114. Acceptance of concurrent jurisdiction over Veterans Administration Center.

83-102. (20) Territorial jurisdiction, limitations on.

Jurisdiction Over Indian Divorce

State has jurisdiction over divorce action brought by an Indian plaintiff against an Indian defendant, both residing on reservation, since the power to grant a divorce has not been pre-empted by the federal government and does not interfere with reservation self-government. State ex rel. Iron Bear v. District Court, Fifteenth Judicial Dist.,

Roosevelt County, — M —, 512 P 2d 1292.

State court had jurisdiction over petition for divorce filed by one Indian against another where Indian tribal court had not attempted to exercise jurisdiction over marriage and divorce; the courts of this state are open to all Indian citizens and they are entitled to the protection of the state laws and utilization of state courts. Bad Horse v. Bad Horse, — M —, 517 P 2d 893.

83-105. Repealed.

Repeal

Section 83-105 (Sec. 1, Ch. 1, L. 1939), relating to the conveyance of mineral

rights in Glacier National Park, was repealed by Sec. 116, Ch. 428, Laws 1973.

83-108. (25) Jurisdiction over lands purchased by United States.

Pursuant to article 1, section 8, paragraph 17 of the constitution of the United States, consent to purchase is hereby given, and exclusive jurisdiction ceded, to the United States over and with respect to any lands within the limits of this state, which shall be acquired by the complete purchase by the United States, for any of the purposes described in said paragraph of the constitution of the United States, said jurisdiction to continue as long as said lands are held and occupied by the United States for said purposes; reserving, however, to this state the right to serve and execute civil or criminal process lawfully issued by the courts of the state, within the limits of the territory over which jurisdiction is ceded in any suits or transactions for or on account of any rights obtained, obligations incurred, or crimes committed in this state, within or without such territory; and reserving further to the said state the right to tax persons and corporations, their franchises and property within said territory; and reserving further to the state and its inhabitants and citizens the right to fish and hunt, and the right of access, ingress and egress to and through said ceded territory to all persons owning or controlling livestock for the pur-

pose of watering the same, and saving further to the state of Montana jurisdiction in the enforcement of state laws relating to the duties of the department of livestock and the department of health and environmental sciences, and the enforcement of any regulations promulgated by said departments in accordance with the laws of the state of Montana; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, shall file an accurate map or plat and description by metes and bounds of said lands in the office of the county clerk and recorder of the county in which said lands are situated, and if such lands shall be within the corporate limits of any city, such map or plat shall also be filed in the office of the city clerk of said city, and the filing of such map as herein provided, shall constitute acceptance of the jurisdiction by the United States as herein ceded. The offer by the state of Montana to cede to the federal government legislative jurisdiction over areas within the state of Montana as contained in the act of the second legislative assembly of the state of Montana, 1891, entitled: "An act giving the consent of the state of Montana to the purchase, by the United States, of land in any city or town of the state, for the purpose of United States courthouse, post office and for other purposes" approved March 5, 1891, as amended by the act of the third legislative assembly of 1893, an act entitled: "An act giving the consent of the state of Montana to the purchase by the United States of land in any city or town of the state for the purpose of United States courthouse, post offices and for other like purposes," approved March 9, 1893, is hereby withdrawn except as to areas heretofore completely purchased or acquired by the federal government and over which areas the federal government has heretofore assumed either exclusive legislative jurisdiction or concurrent legislative jurisdiction under the terms of one or the other of said acts.

History: En. Sec. 1, p. 52, L. 1893; re-en. Sec. 43, Pol. C. 1895; re-en. Sec. 24, Rev. C. 1907; re-en. Sec. 25, R. C. M. 1921; amd. Sec. 1, Ch. 155, L. 1939; amd. Sec. 102, Ch. 349, L. 1974.

the department of health and environmental sciences near the middle of this section for references to the livestock sanitary board and the state board of health.

Amendments

The 1974 amendment substituted references to the department of livestock and

References

State ex rel. Parker v. District Court, 147 M 151, 410 P 2d 459.

83-109. (25.1) Concurrent jurisdiction over Fort Peck dam ceded to United States—reservation of rights to state. That consent to purchase or condemn all necessary lands is hereby given and concurrent jurisdiction shall be, and the same is hereby, ceded to the United States over the Fort Peck dam, the body of water or artificial lake created by such dam, the land under such body of water, and any lands now owned or which may be hereafter acquired by the United States and which shall touch such body of water, all such being situated in the counties of Valley, Phillips, McCone, Garfield, Petroleum and Fergus, state of Montana, saving, however, to the said state the right to serve civil or criminal process within the limits of the territory over which jurisdiction is so ceded in any suits or prosecutions for or an account of rights obtained, obligations incurred, or crimes committed in said state, within or without said territory, and saving

further to the said state the right to tax persons and corporations, their franchises and property within said territory, and reserving further to the said state and its inhabitants, citizens, and nonresidents the right to fish or hunt by boat or otherwise, and the right of access, ingress and egress to and through said ceded territory to all persons owning or controlling livestock for the purpose of watering the same, and saving further to the state jurisdiction in the enforcement of the state laws relating to the duties of the department of livestock, and the department of health and environmental sciences, and the enforcement of regulations promulgated by said departments in accordance with the laws of said state; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, notifies the governor of the state of Montana that they assume police or military jurisdiction over said territory.

History: En. Sec. 1, Ch. 50, Ex. L. 1933; amd. Sec. 103, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to the department of livestock and the department of health and environmental sciences near the end of this section for references to the livestock sanitary board and the state board of health.

83-114. Acceptance of concurrent jurisdiction over Veterans Administration Center. The state of Montana hereby accepts the cession of concurrent jurisdiction with the United States over the real property comprising the Veterans Administration Center, Fort Harrison, Montana as ceded by Public Law 91-45; 83 Stat. 48, which was approved July 19, 1969, and made effective upon acceptance of the cession by the state of Montana.

History: En. Sec. 1, Ch. 157, L. 1971.

Title of Act

An act accepting the cession of concurrent jurisdiction with the United States over the real property comprising the Veterans Administration Center, Fort Harrison, Montana; and providing an effective date.

Effective Date

Section 2 of Ch. 157, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

CHAPTER 7—TORT ACTIONS AGAINST STATE

Section

83-701. Jurisdiction of district courts.

83-706.1. Governmental immunity abolished.

83-701. Jurisdiction of district courts. The district courts of the state of Montana shall have exclusive jurisdiction on any claim against the state of Montana for injury to person or property, accruing on or after July 2, 1973, on account of damage to or loss of property, or on account of personal injuries or death caused by the negligence or wrongful act or omission of any employee of the state of Montana, while acting within the scope of his office or employment, under circumstances where the state of Montana, if a private person, would be liable to the claimant for such damage, loss, injury or death, in accordance with the law of the state of Montana.

History: En. Sec. 1, Ch. 254, L. 1959; amd. Sec. 1, Ch. 93, L. 1973.

Amendments

The 1973 amendment deleted "to hear, determine, and render judgment to the

extent of the insurance coverage carried by the state of Montana" after "exclusive jurisdiction"; substituted "for injury to person or property, accruing on or after July 2, 1973" for "for money only, accruing on or after the passage and approval of this act"; and deleted two sentences reading: "The state of Montana shall be liable in respect of such claims to the said claimant in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana shall not be liable for interest prior to judgment, nor for punitive damages. Costs shall be allowed in all courts to the successful complainant, to the same extent if the state of Montana were a private litigant, except that such costs shall not include attorneys' fees."

Purpose of Act

The purpose of the legislature in enacting this chapter was to establish the doctrine of sovereign immunity and to pro-

vide certain waivers of that immunity. *Kish v. Montana State Prison*, — M —, 505 P 2d 891.

Sovereign Immunity

State prison which participated in forest fire-fighting effort by lending a bulldozer, a guard and two prisoners to operate the bulldozer, all of whom were under the direction of the United States Forest Service during the fighting of the fire, was immune under doctrine of sovereign immunity from suit for injuries to person who, several days after fire had been extinguished, was injured when wind caused an uprooted tree which had been left leaning against another tree to fall on him; since prison was attempting to protect its own land adjacent to the fire area, it was engaged in a governmental rather than a proprietary function. *Kish v. Montana State Prison*, — M —, 505 P 2d 891.

DECISIONS UNDER FORMER LAW

Sovereign Immunity

Limitations of the doctrine of sovereign immunity (40-4401 et seq., 75-5939 et seq., and 83-701 et seq.) are binding upon the supreme court so that state is not liable in excess of collectible insurance. *Kaldahl v. State Highway Commission*, 158 M 219, 490 P 2d 220.

State highway commission and state of Montana are immune from suit for plaintiffs' injuries and property damage to their

automobile despite allegations that the highway department had not kept the highway in proper and reasonable repair, or erected appropriate warning signs where there was a dangerous and unsafe section containing "chuck" holes, one of which caused plaintiffs' automobile to jolt out of control, overturn, and injure plaintiffs. *Kaldahl v. State Highway Commission*, 158 M 219, 490 P 2d 220.

83-706. Repealed.

Repeal

Section 83-706 (Sec. 6, Ch. 254, L. 1959), creating state immunity from liability in

excess of insurance coverage, was repealed by Sec. 3, Ch. 93, Laws 1973.

83-706.1. Governmental immunity abolished. The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property. This provision shall apply only to claims for relief and causes of action arising after July 1, 1973. The state, through the department of administration, has the right to provide for self insurance for claims for injury to a person or property. The state, counties, cities, towns, and all other local governmental entities have the right also, but not the duty, to purchase insurance to protect against claims for injury to a person or property.

History: En. 83-706.1 by Sec. 2, Ch. 93, L. 1973.

Title of Act

An act to implement article II, section 18, concerning sovereign immunity by providing availability of insurance coverage for governmental entities; amending section 87-701 [83-701], R. C. M. 1947; repealing section 83-706, R. C. M. 1947; and providing for an effective date.

Repealing Clause

Section 3 of Ch. 93, Laws 1973 read "Section 83-706, R. C. M. 1947, is repealed."

Effective Date

Section 4 of Ch. 93, Laws 1973 read "Section 1 and Section 3 of this act are effective on July 1, 1973, Section 2 is effective on passage."

CHAPTER 8—JURISDICTION OF INDIAN COUNTRY

83-801. Criminal jurisdiction, etc.

Effect of Chapter

This section constitutes valid and binding consent of people of Montana pursuant to federal statute to assume jurisdiction over crimes committed by or against Indians on Indian territory. State ex rel. McDonald v. District Court, 159 M 156, 496 P 2d 78.

Legislative Action Sufficient to Establish Jurisdiction

Federal statute providing for state jurisdiction over offenses committed by or against Indians on Indian reservations did not require constitutional amendment for valid and binding consent of people of Montana to assume jurisdiction; where Congress retained power to reassume federal jurisdiction through repeal of same statute state legislative action was sufficient to establish jurisdiction. State ex rel. McDonald v. District Court, 159 M 156, 496 P 2d 78.

Scope of Chapter

The Northern Cheyenne reservation was not within the scope of this chapter, and in the absence of action by the state and the tribe in strict compliance with congressional requirements for transfer of jurisdiction, the tribal council could not waive to the district court jurisdiction of juvenile delinquency on the reservation. Blackwolf v. District Court, 158 M 523, 493 P 2d 1293.

Tribal Council Action

Failure of state legislature to take affirmative legislative action concerning either civil or criminal jurisdiction over Indians on Blackfeet reservation as permitted under 28 U. S. C. § 1360 was not remedied by unilateral tribal council action, which provided that tribal and state courts have concurrent jurisdiction in all civil suits against members of Blackfeet tribe. Kennerly v. District Court of the Ninth Judicial District of Montana, 400 US 423, 27 L Ed 2d 507, 91 S Ct 480.

83-806. Withdrawal of consent to state jurisdiction.

Withdrawal of Consent

Tribal resolution attempting to withdraw consent to state jurisdiction over criminal offenses committed on Indian reservation was ineffective where it was enacted more than two years after state assumed jurisdiction; governor had no power to extend time limit for withdrawal of tribal consent. State ex rel. McDonald v. District Court, 159 M 156, 496 P 2d 78.

Tribal resolution attempting to withdraw consent to state jurisdiction over criminal offenses committed on Indian reservation did not constitute a valid withdrawal of such consent where resolution was never transmitted to governor and no gubernatorial proclamation was ever issued concerning the tribal resolution. State ex rel. McDonald v. District Court, 159 M 156, 498 P 2d 78.

CHAPTER 9—ASSIGNMENT OF CLAIMS AGAINST STATE

Section

83-901. Notice to state auditor.

83-902. Limitations on assignment.

83-903. Power of state auditor to promulgate rules.

83-904. Effect of assignment.

83-901. Notice to state auditor. All transfers and assignments made of any claim against the state of Montana, or any part thereof, or interest thereon, except as hereinafter provided, shall be absolutely null and void and unenforceable against the state of Montana unless the assignee thereof files written notice of the assignment on such forms as may be required by the state auditor, together with a true copy of the instrument of assignment.

History: En. Sec. 1, Ch. 44, L. 1967.

Title of Act

An act to require assignees of moneys

due from the state of Montana to file written notice of assignment and a copy of the assignment instrument with the state auditor; restricting multiple assign-

ments; authorizing promulgation of rules and regulations for such assignments by the state auditor; and allowing deductions to be made from salaries of employees of the state for specified purposes.

83-902. Limitations on assignment. Unless otherwise expressly permitted by the state auditor, no more than one assignment of a claim shall be effective at one time, and no assignment shall be made to more than one party, except that an assignment may be made to one party as agent or trustee for two (2) or more parties. An assignment shall not be subject to further assignment.

History: En. Sec. 2, Ch. 44, L. 1967.

83-903. Power of state auditor to promulgate rules. The state auditor may promulgate rules and regulations regarding the form of assignment, the procedures for filing assignments, and the submission of claims covering assigned funds.

History: En. Sec. 3, Ch. 44, L. 1967.

83-904. Effect of assignment. Nothing contained herein shall in any way impair the negotiability of state warrants, nor preclude employees of the state of Montana from authorizing deductions from salaries for employees group insurance programs authorized by law, union dues, or purchase of U.S. government savings bonds.

History: En. Sec. 4, Ch. 44, L. 1967.

REVISED CODES OF MONTANA

VOLUME 5

Part 2

1974 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 5 (PART 2) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 5
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For index see pocket supplement to Replacement Volume 9

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CHAPTER 1—DEFINITION OF TERMS

Section

84-101. Definition of terms.

84-101. (1996) Definition of terms. Whenever the terms mentioned in this section are employed in dealing with the subject of taxation, they are employed in the sense hereafter affixed to them.

First and Second. * * * [Same as parent volume.]

Third—The term “improvements” includes all buildings, structures, mobile homes, fixtures, fences, and improvements, including mobile homes, situated upon, erected upon or affixed to the land, whether title has been acquired to said land or not.

Fourth to Sixth. * * * [Same as parent volume.]

Seventh—The term “mobile home” means forms of housing known as “trailers,” “house trailers” or “trailer coaches” exceeding eight (8) feet in width or thirty-two (32) feet in length designed to be moved from one place to another by an independent power connected thereto.

History: En. Sec. 4, p. 74, L. 1891; re-en. Sec. 3680, Pol. C. 1895; re-en. Sec. 2501, Rev. C. 1907; re-en. Sec. 1996, R. C. M. 1921; amd. Sec. 1, Ch. 99, L. 1939; amd. Sec. 1, Ch. 296, L. 1967. Cal. Pol. C. Sec. 3617.

Amendments

The 1967 amendment, in the paragraph beginning “Third,” inserted “mobile homes” after “structures”; inserted “including mobile homes, situated upon” after “improvements”; and added the paragraph beginning “Seventh.”

CHAPTER 2—PROPERTY SUBJECT TO TAXATION—BASIS FOR TAXATION

Section

84-202. Exemptions from taxation.

84-207. Privilege tax upon possession and use of tax-exempt property—exceptions.

84-208. Rate of tax same as ad valorem property tax—credit against tax on use of federally owned property.

- 84-209. Assessment—collection and distribution—taxes shall not become a lien against property.
- 84-210. Failure to pay tax—remedies of county.

84-202. (1998) Exemptions from taxation. (1) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt; provided, the term "institutions of purely public charity" as used in this act shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; provided, that the terms public art galleries and public observatories used in this act shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only, and also when a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

(2) All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family actually used by the owner for personal and domestic purposes, or for furnishing or equipping the family residence are exempt from taxation.

History: Ap. p. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1931; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974. Cal. Pol. C. Secs. 3607 and 3611.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 266 and once by Ch. 361.

Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 266, Laws of 1973, added the second, third and fourth paragraphs.

Chapter 361, Laws of 1973, inserted "all unprocessed, perishable fruits and vegetables in farm storage and owned by the

producer" near the beginning of the first paragraph.

The 1974 amendment inserted the numerical subsection designation (1) at the beginning of the first paragraph; deleted the phrase inserted by Ch. 361, Laws of 1973, near the beginning of subsection (1); deleted the paragraphs added by Ch. 266, Laws of 1973, pertaining to the exemption of free port merchandise; and added subsection (2).

Effective Date

Section 3 of Ch. 376, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 30, 1974.

"Educational Purposes"

The term "educational purposes," as used in section 2, article XII of the 1889 constitution and this section, exempting property used exclusively for "educational purposes" from taxation, is not defined in terms of common scholastic institutions of grammar school, high school and university or college. Organizations for the social, intellectual, physical, or religious welfare of the children are exempt equally. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Religious education is exempt as an "educational purpose" and not as "actual religious worship" even though elements of the latter may be present and may serve to strengthen the exemption of all the property. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

"Exclusive Use" Defined

The words "exclusive use" consistently have been held to mean the primary and inherent use and not the mere secondary or incidental uses of the property. Flat-

head Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Exemption of Church Camp

Where church summer camp, containing twenty-two acres of land and twenty-eight improvements, was "exclusively used for educational purposes" within the meaning of this section and section 2, article XII of the 1889 constitution, it was exempt from taxation. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Extent of Exemption

When exempting an institution of charity, sufficient residence and recreation area may also be exempt. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Limits of Public Charity

An institution of purely public charity, which is exempt from taxation under section 2, article XII of the 1889 constitution and this section, may be devoted to bringing people under religious influence, the beneficiaries of the charity may pay a small portion of the cost, and the activity may be limited to a particular class so long as the numbers who may participate remain somewhat indefinite. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Nonprofit Foundation

Nonprofit foundation operating and maintaining home for aged was entitled to tax exemption under statute granting exemption to institutions of purely public charity, notwithstanding evidence that foundation charged fees and imposed admission requirements. Bozeman Deaconess Foundation v. Ford, 151 M 143, 439 P 2d 915, 37 ALR 3d 558.

84-207. Privilege tax upon possession and use of tax-exempt property—exceptions. From and after the effective date of this act there is imposed and there shall be collected a tax upon the possession or other beneficial use enjoyed by any private individual, association, or corporation of any property, real or personal, which for any reason is exempt from taxation. No tax shall be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit or easement relates.

History: En. Sec. 1, Ch. 370, L. 1969.

Compiler's Notes

This act became effective March 17, 1969.

Title of Act

An act to provide a privilege tax upon possession and use of tax-exempt property; providing exceptions thereto; fixing the rate of such tax and credit against tax;

providing for assessment, collection and distribution of said taxes; providing penalties for failure to pay the tax and preserving constitutional exemption, and providing an effective date.

84-208. Rate of tax same as ad valorem property tax—credit against tax on use of federally owned property. The tax imposed upon such possession or other beneficial use of tax-exempt property shall be in the same amount and to the same extent as the ad valorem property tax would be if the possessor or user were the owner thereof; provided that there shall be credited against the tax so imposed upon the beneficial use of property owned by the federal government the amount of payments which are made in lieu of taxes.

History: En. Sec. 2, Ch. 370, L. 1969.

84-209. Assessment—collection and distribution—taxes shall not become a lien against property. The tax imposed hereunder shall be assessed to such possessors or users of the tax-exempt property upon the same forms, and shall be collected and distributed at the same time and in the same manner as taxes assessed to owners, possessors, or other claimants of property which is subject to ad valorem taxation, except that such taxes shall not become a lien against the property, and no such tax-exempt property may be attached, encumbered, sold or otherwise affected for the collection of the tax imposed hereunder.

History: En. Sec. 3, Ch. 370, L. 1969.

84-210. Failure to pay tax—remedies of county. A tax due and unpaid under this act shall constitute a debt due the county for and on behalf of the various taxing units concerned in the tax. If the tax imposed by this act or any portion thereof is not paid at the time the same becomes delinquent the county auditor may issue a warrant in the name of the county directed to the clerk of the district court in his county and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent taxpayer mentioned in the warrant and, in the appropriate columns, the amount of tax, penalties, interest and other costs for which the warrant is issued and the date when such warrant is filed, and thereupon the warrant so docketed shall have the force and effect of a judgment duly rendered by a district court and docketed in the office of the clerk thereof, and the county shall have the same remedies against the possessor user as any other judgment docket.

History: En. Sec. 4, Ch. 370, L. 1969.

84-211. Repealed.**Repeal**

Section 84-211 (Sec. 5, Ch. 370, L. 1969), relating to exemptions granted by the 1889

Montana constitution, was repealed by Sec. 58, Ch. 100, Laws 1973, and Sec. 120, Ch. 405, Laws 1973.

CHAPTER 3—CLASSIFICATION OF PROPERTY FOR TAXATION—
BASIS FOR TAXATION

Section

84-301. Classification of property for taxation.

84-302. Basis for imposition of taxes.

84-307. Assessment of shares of banks—deductions.

84-308. Basis for imposition of taxes on moneys and credits, moneyed capital and bank shares.

84-301. (1999) Classification of property for taxation. For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land by any person or corporation, the surface title to which has passed to another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (b) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter ($1\frac{1}{4}$) miles.

Class Three. Livestock, poultry and unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; and all office or hotel furniture and fixtures.

Class Four. (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) * * * [Same as parent volume.]

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-

operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this subsection (b) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in **Class Two**.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, and excepting livestock and poultry and the unprocessed products of both.]

(d) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the widow remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R. C. M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property

for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

Class Eight. Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, valued at not more than seventeen thousand five hundred dollars (\$17,500), which is owned or under a contract for deed, and which is actually occupied by:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-five (65) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient of retirement benefits whose income from all sources is not more than four thousand dollars (\$4,000) for a single person and five thousand two hundred dollars (\$5,200) for a married couple per annum. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the state department of revenue supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies such improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class. For purposes of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of section 94-7-203, R. C. M. 1947, relating to the criminal offense of false swearing.

Class Nine. All property not included in the eight (8) preceding classes.

History: En. Sec. 1, Ch. 51, L. 1919; amd. Sec. 1, Ch. 248, L. 1921; re-en. Sec. 1999, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1937; amd. Sec. 1, Ch. 107, L. 1941; amd. Sec. 1, Ch. 286, L. 1947; amd. Sec. 1, Ch. 45, L. 1951; amd. Sec. 1, Ch. 178, L. 1951; amd. Sec. 1, Ch. 88, L. 1957; amd. Sec. 1, Ch. 103, L. 1961; amd. Sec. 2, Ch. 239, L. 1961; amd. Sec. 1, Ch. 168, L. 1965; amd. Sec. 1, Ch. 215, L. 1967; amd. Sec. 1, Ch. 294, L. 1967; amd. Sec. 2, Ch. 296, L. 1967; amd. Sec. 1, Ch. 292, L. 1969; amd. Sec. 1, Ch. 305, L. 1969; amd. Sec. 1, Ch. 35, L. 1971; amd. Sec. 1,

Ch. 312, L. 1971; amd. Sec. 1, Ch. 317, L. 1971; amd. Sec. 1, Ch. 354, L. 1971; amd. Sec. 2, Ch. 266, L. 1973; amd. Sec. 2, Ch. 361, L. 1973; amd. Sec. 1, Ch. 405, L. 1973; amd. Sec. 1, Ch. 489, L. 1973; amd. Sec. 1, Ch. 223, L. 1974; amd. Sec. 2, Ch. 376, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 223 and once by Ch. 376. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not ap-

pear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 215, Laws of 1967 deleted "with none other than his or her spouse, minor or dependent children, or persons not responsible for all or any part of the financial support of the affiant, and that the improvements are not used for income-producing purposes other than such purposes as are normally permitted in or on such improvements" after "occupies such improvements" in the next to last sentence of subparagraph (4) under Class Eight.

Chapter 294, Laws of 1967, in the subsection beginning "Class Seven" designated the first paragraph as "(a)," and added subdivision (b); in the subsection beginning "Class Eight" deleted "or" before "dependent" in subdivision (2); and made minor changes in style.

Chapter 296, Laws of 1967 in the paragraph beginning "Class Two," inserted "except mobile homes" after "vehicles of all kinds"; in the paragraph beginning "Class Three," inserted "except mobile homes" after "used therewith" and in the paragraph beginning "Class Four," designated the first paragraph as subparagraph (a), and added subparagraph (b).

Chapters 292 and 305, Laws of 1969, in the paragraph beginning "Class Two" added "and except * * * one and one-quarter (1¼) miles"; in the paragraph beginning "Class Eight" substituted "\$17,500" for "\$15,000" in the introductory paragraph, and in subdivision (4), substituted "whose income from all sources * * * married couple per annum" for "not exceeding one hundred fifty dollars (\$150) per month, if single, or two hundred fifty dollars (\$250) per month if married" and deleted a proviso which read, "Provided such owner and occupier is not gainfully employed to such an extent as would render him or her ineligible for social security benefits, should he or she be otherwise eligible for such benefits, and does not have income from all sources, excluding retirement benefits as mentioned in (4) hereinabove, in excess of one thousand five hundred dollars (\$1,500) per year."

Chapter 35, Laws of 1971, redesignated former subdivision (b) of Class Seven as Class Nine; redesignated former Class Nine as Class Ten; and made minor changes in style.

Chapter 312, Laws of 1971, added "or Class Eight" at the end of subdivision (a) under Class Four; added "and except as such property may be included in Class Eight" at the end of subdivision (b) under Class Four; inserted "trailers affixed to land or mobile home belonging to any

person who qualifies under any one or more of the hereinafter set forth categories" in the preliminary paragraph under Class Eight; inserted "or under a contract for deed" in the preliminary paragraph under Class Eight; deleted "by a widow, with or without minor or dependent children, or" after "actually occupied by" in the preliminary paragraph under Class Eight; inserted "who qualifies under the income limitations of (4)" in each of subdivisions (1), (2) and (3) under Class Eight; increased the income limitations in subdivision (4) under Class Eight from \$3,300 to \$4,000 for a single person and from \$4,500 to \$5,200 for a married couple; and made minor changes in phraseology and style.

Chapter 317, Laws of 1971, inserted the two paragraphs constituting subdivision (d) under Class Five, and made minor changes in style.

Chapter 354, Laws of 1971, added to subdivision (b) under Class Five the exception relating to property within the incorporated limits of a city or town, and made minor changes in style.

Chapter 266, Laws of 1973, deleted the provisions relating to freeport merchandise originally enacted as subdivision (b) of Class Seven by Ch. 294, Laws 1967, and redesignated as Class Nine by Ch. 35, Laws 1971; and redesignated as Class Nine the provision appearing in the parent volume as Class Nine but redesignated Class Ten by Ch. 35, Laws 1971.

Chapter 361, Laws of 1973, inserted "except all perishable fruits and vegetables and farm storage and owned by the producer" in subdivision (c) of Class Five.

Chapter 405, Laws of 1973, substituted references to the state department of revenue for references to the county assessor and the state board of equalization.

Chapter 489, Laws of 1973, inserted "or received by mesne conveyance (exclusive of leasehold interest), devise or succession" in the middle of Class One; and inserted "or remains in" following "the surface title to which has passed to" in the middle of Class One.

Chapter 223, Laws of 1974, added the provision at the end of subdivision (4) of Class Eight permitting persons entitled to a Class Eight property tax classification to submit a mailed, unnotarized application to the department of revenue.

Chapter 376, Laws of 1974, deleted the two phrases inserted in Class One by Ch. 489, Laws of 1973; deleted "household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment

of the family residence" from Class Two; and deleted the phrase inserted in subdivision (c) of Class Five by Ch. 361, Laws of 1973.

Repealing Clause

Section 2 of Ch. 292, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 2 of Ch. 215, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 1, 1967.

Section 3 of Ch. 292, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 10, 1969.

Section 2 of Ch. 312, Laws 1971 provided the act should be in effect from and

after its passage and approval. Approved March 15, 1971.

Section 3 of Ch. 376, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 30, 1974.

New Industry

Classification of new business established for production of eggs on mass scale as "commercial" rather than "new industry property" under Class Seven was improper since use of agricultural products in industry does not eliminate that industry from benefits of Class Seven. *Cherry Lane Farms of Montana, Inc. v. Carter*, 153 M 240, 456 P 2d 296.

References

State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

DECISIONS UNDER FORMER LAW

Reserved Right of Entry

Reserved right of entry for purpose of exploring and developing a mineral right can be taxed as an independent entity of value; a conveyed right cannot be so taxed; a reserved right is a taxable entity

distinct from the mineral interest which is taxable only on production, whereas a conveyed right is appurtenant to the mineral right with no independent taxable status. *Cranston v. Musselshell County*, 156 M 288, 483 P 2d 289.

84-302. (2000) Basis for imposition of taxes. As a basis for the imposition of taxes upon the different classes of property specified in the preceding section, a percentage of the true and full value of the property of each class shall be taken as follows:

Classes 1 to 5. * * * [Same as parent volume.]

Class 6. As specified in section 84-308, R. C. M. 1947.

Class 7. Seven per cent (7%) of its true and full value.

Class 8. Fifteen per cent (15%) of its true and full value.

Class 9. Forty per cent (40%) of its true and full value.

History: En. Sec. 2, Ch. 51, L. 1919; re-en. Sec. 2000, R. C. M. 1921; amd. Sec. 3, Ch. 239, L. 1961; amd. Sec. 2, Ch. 168, L. 1965; amd. Sec. 2, Ch. 305, L. 1969; amd. Sec. 2, Ch. 35, L. 1971; amd. Sec. 2, Ch. 317, L. 1971; amd. Sec. 3, Ch. 266, L. 1973; amd. Sec. 1, Ch. 49, L. 1974.

Amendments

The 1969 amendment substituted "fifteen per cent (15%)" for "twenty per cent (20%)" in Class 8.

Chapter 35, Laws of 1971, inserted a Class 9 with 1% rate corresponding to the Class Nine inserted in sec. 84-301 by the same act; and redesignated Class 9 as Class 10.

Chapter 317, Laws of 1971, made no change in this section.

The 1973 amendment deleted the Class 9 inserted by Ch. 35, Laws 1971; and redesignated former Class 10 as Class 9.

The 1974 amendment substituted "As specified in section 84-308, R. C. M. 1947" in Class 6 for "Forty per cent (40%) of its true and full value."

Repealing Clause

Section 3 of Ch. 305, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Section 3 of Ch. 35, Laws 1971 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 4 of Ch. 305, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 11, 1969.

Section 4 of Ch. 35, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 18, 1971.

Section 2 of Ch. 49, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved February 27, 1974.

References

State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

84-306. (2000.4) Repealed.

Repeal

Section 84-306 (Sec. 4, Ch. 64, L. 1929; Sec. 1, Ch. 34, L. 1939), relating to valua-

tion of shares of stock of national banks, was repealed by Sec. 1, Ch. 25, Laws 1971.

84-307. (2000.5) Assessment of shares of banks—deductions. The shares of all banking corporations engaged in the banking business in Montana shall be valued and assessed for the purpose of taxation at the full cash value thereof, less the book value of the real estate, moneyed capital and other property of any such bank assessed and taxed as the property of said bank.

History: En. Sec. 5, Ch. 64, L. 1929; amd. Sec. 2, Ch. 25, L. 1971.

"Section 84-306, R. C. M. 1947, is repealed."

Amendments

The 1971 amendment deleted "state" before "banking corporations"; and inserted "book" before "value of the real estate."

Effective Date

Section 3 of Ch. 25, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 16, 1971.

Repealing Clause

Section 1 of Ch. 25, Laws 1971 read

84-308. (2000.6) Basis for imposition of taxes on moneys and credits, moneyed capital and bank shares. As a basis for the imposition of taxes upon the different classes of property herein specified, a percentage of the true and full value of each class shall be taken as follows:

Moneys and credits, seven per centum (7%) of true and full value.

Moneyed capital and shares of banks, both national and state, thirty per centum (30%) of true and full value on that portion of the true and full value not represented by surplus, as shown on the books of the bank; seven per centum (7%) on that portion of the true and full value represented by surplus as shown on the books of the bank; provided that on that portion of any of such surplus which is over and above the amount represented by the stated capital of a bank, the excess shall be subject to thirty per centum (30%) of true and full value. The state department of revenue shall prepare, distribute and cause to be used such forms as it may require to obtain from the banks doing business in this state reports of such facts and figures as may be necessary to ascertain the taxable value of bank shares as a basis for the imposition of taxes.

History: En. Sec. 6, Ch. 64, L. 1929; amd. Sec. 1, Ch. 172, L. 1957; amd. Sec. 1, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the second sentence of the third paragraph.

CHAPTER 4—ASSESSMENT OF PROPERTY—POWERS, DUTIES AND LIABILITY OF COUNTY ASSESSOR

Section

- 84-401. Property assessed at cash value—exception for agricultural lands.
- 84-402. Department of revenue to determine and show percentage basis and taxable value computed thereon and county assessor to be agents of the state department of revenue.

- 84-403. Appeal for taxpayer aggrieved at percentage assignment.
- 84-404. State department of revenue to assign percentage basis, when.
- 84-405. Assessor's blanks and rolls to be provided by state department of revenue.
- 84-406. Time of assessment—motor vehicles—mobile homes—livestock—snowmobiles.
- 84-409. Statement—what to contain.
- 84-410. Department of revenue to furnish blanks, etc.
- 84-411. Statement to be filled out and returned to agent of the department of revenue.
- 84-412. General powers of department of revenue.
- 84-413. Method of making assessment upon refusal of statement.
- 84-414. Assessment of unknown or absent owners.
- 84-415. Assessment of unknown or absent owners—in whose name property to be assessed.
- 84-427. Assessment of railroads, telegraph, telephone and electric light lines.
- 84-428. Railroads—how assessed.
- 84-429. Land—how assessed.
- 84-429.7. Classification and appraisal—duties of the department of revenue.
- 84-429.9. Assessments to be made on classification and appraisal.
- 84-429.11. Notice of classification and appraisal to owners—appeals.
- 84-429.12. Classification and appraisal—general and uniform methods.
- 84-437.1. Legislative intent as to agricultural property.
- 84-437.2. Eligibility of land for valuation as agricultural.
- 84-437.3. Agricultural uses only considered in valuation.
- 84-437.4. Roll-back tax—computation.
- 84-437.5. Roll-back tax procedures governed by nonagricultural provisions.
- 84-437.6. Improvements on agricultural land.
- 84-437.8. Continuance of valuation as agricultural land—roll-back tax attaching on change of use.
- 84-437.9. Roll-back tax on change of use of part of tract.
- 84-437.10. Agricultural land taken under eminent domain.
- 84-437.11. Tract crossing county line considered as whole.
- 84-437.12. Factual details as to agricultural land to be shown on tax list.
- 84-437.13. Rules—regulations—forms.
- 84-437.14. Violation as misdemeanor.
- 84-437.15. Reclassification by department of revenue.
- 84-437.16. Reclassification by owner.
- 84-437.17. Refund of late filing fee.
- 84-439. Property concealed, misrepresented, etc.
- 84-440. Property having escaped assessment.
- 84-441. Supplemental assessment.
- 84-448. Annual settlements.
- 84-449. Department of revenue to collect farm statistics.
- 84-450. Delivery to commissioner of agriculture.
- 84-451. Statistics, how obtained.
- 84-452. Penalty for refusal to furnish statistics.

84-401. (2001) Property assessed at cash value—exception for agricultural lands. All taxable property must be assessed at its full cash value except the assessment of agricultural lands shall be based upon the productive capacity of the lands when valued for agricultural purposes. All lands shall be valued as agricultural lands for tax purposes that meet the qualifications of section 84-437.2, R. C. M. 1947. Land and the improvements thereon must be separately assessed.

History: En. Sec. 5, p. 76, L. 1891; re-en. Sec. 3690, Pol. C. 1895; re-en. Sec. 2502, Rev. C. 1907; re-en. Sec. 2001, R. C. M. 1921; amd. Sec. 2, Ch. 512, L. 1973; amd. Sec. 1, Ch. 56, L. 1974. Cal. Pol. C. Sec. 3627.

Amendments

The 1973 amendment inserted the exception relating to agricultural lands at the end of the first sentence.

The 1974 amendment deleted "and shall be so valued unless a different use is demonstrated" from the end of the first sentence and inserted the second sentence.

84-402. (2001.1) Department of revenue to determine and show percentage basis and taxable value computed thereon and county assessor to be agents of the state department of revenue. (1) The percentage basis

of true and full value as provided for in section 84-302, shall be determined and assigned by the state department of revenue or its agents, and the taxable value thereupon computed when they make their annual assessments, and copies of such assessments as provided for in section 84-411 shall show the taxpayer the percentage class to which his various classes of property for taxation and the taxable valuation thereof have been assigned.

(2) The county assessors of the various counties of the state of Montana are agents of the state department of revenue for the purpose of locating and providing the department a description of all taxable property within the county together with other pertinent information; and for the purpose of performing such other administrative duties as are required for placing taxable property on the assessment rolls. The assessors shall perform such other duties as are required by law, not in conflict with the provisions of this subsection.

(3) The department of revenue shall have full charge of appraising all property subject to taxation and equalizing values and shall secure such personnel as is necessary to properly perform their duties.

(4) The salaries of the county assessor shall be the same amount as provided by law for the salary of the county clerk and recorder; deputy assessors' salaries shall be the same as paid the deputy clerk and recorder.

(5) The county commissioners of the various counties shall provide existing office space in the county courthouse for use by the county assessor, his deputies and staff and the state appraiser and staff, if such space is reasonably available; if such space is not reasonably available in the courthouse and the same must be contracted for, the department shall pay the cost thereof. Additional personal property required by the department for the assessor to perform his duties as agent of the department shall be provided by the department.

History: En. Sec. 1, Ch. 61, L. 1925; amd. Sec. 1, Ch. 100, L. 1939; amd. Sec. 2, Ch. 405, L. 1973.

Amendments

The 1973 amendment designated the lan-

guage in the former section as subsection (1); substituted "state department of revenue or its agents" for "county assessors" in subsection (1); made a minor change in phraseology; and added subsections (2) through (5).

84-403. (2001.2) Appeal for taxpayer aggrieved at percentage assignment. If any taxpayer shall feel aggrieved at the percentage assignment so made by the department of revenue or its agent, he shall have the right to appeal to the county tax appeal board, on the percentage assignment the same as he now has on valuations, and also, the right to appeal from the county tax appeal board to the state tax appeal board, whose findings shall be final except as to, the right of review in the proper courts.

History: En. Sec. 2, Ch. 61, L. 1925; amd. Sec. 3, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment of revenue or its agent" for "county assessor"; and substituted references to the county and state tax appeal boards for references to the corresponding boards of equalization.

84-404. (2001.3) State department of revenue to assign percentage basis, when. The percentage basis of true and full value as provided for

in section 84-302, shall be determined and assigned by the state department of revenue, when it makes its annual assessment of the property, which it is required to assess under the laws of this state and shall transmit such determination and assignment to the various county clerks with the assessments so made, and its determination shall be final except as to the right of review in the proper court.

History: En. Sec. 3, Ch. 61, L. 1925; amd. Sec. 49, Ch. 100, L. 1973; amd. Sec. 2, Ch. 516, L. 1973.

section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 100 and once by Ch. 516. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite

Amendments

Chapter 100, Laws of 1973, deleted "the constitution or" before "the laws of this state" near the middle of the section.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization."

84-405. (2001.5) Assessor's blanks and rolls to be provided by state department of revenue. It shall be made the duty of the state department of revenue to prescribe such forms of assessment blanks and assessor's rolls as will comply with the above provisions, grouping all the same percentage class as nearly as possible in one group on blanks and assessor's roll.

History: En. Sec. 5, Ch. 61, L. 1925; amd. Sec. 3, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-406. (2002) Time of assessment—motor vehicles—mobile homes—livestock—snowmobiles. (1) The department of revenue or its agent must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in each county subject to taxation, except such as is required to be assessed by the state department of revenue, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at 12 midnight of the first Monday of March next preceding. It must also ascertain and assess all mobile homes arriving in his [each] county after 12 midnight of the first Monday of March next preceding. The procedure provided by this section shall not apply to:

(a) and (b). * * * [Same as parent volume.]

(c) Property defined in section 53-642 as "special mobile equipment" shall be subject to assessment of personal property taxes either on the date that application is made for a special mobile equipment plate, if that date falls between the first day of January and the first Monday of March, or on the first Monday of March.

(d) Mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.

(e) Snowmobiles and campers which are required by subdivision 4 hereof to be assessed as of the first day of January.

(2) The department or its agent must ascertain and assess all motor vehicles, except mobile homes, in each county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at 12 midnight of the first day of January in each year. Provided that such tax shall not be assessed against motor vehicles which constitute inventory of motor vehicle dealers as of January 1, but said vehicles, and all other motor vehicles brought into the state subsequent to January 1, as motor vehicle dealer's inventory, shall be assessed to their respective purchasers as of the dates said vehicles are registered by said purchasers, and purchasers means and includes dealers who apply for registration or re-registration of motor vehicles, except as otherwise provided by section 32-3315. Goods, wares and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall continue to be assessed at full and true value as of the first Monday of March.

Except that this paragraph shall not apply to an applicant for registration or re-registration of a mobile home, nothing herein contained shall relieve the applicant for registration or re-registration of any other motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or re-registration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid.

(3) The assessed value of livestock being fed in feeding pens or enclosures on the first Monday in March may be computed by adding the value of livestock more than six (6) months of age being fed on the last day of each month since the last assessment date and dividing the sum by twelve (12).

(4) The department of revenue or its agent must ascertain and assess all snowmobiles and campers in his [each] county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such snowmobile or camper was at 12 M of the first day of January in each year; provided, however, that snowmobiles and campers which constitute inventory of snowmobile dealers and camper dealers shall be assessed to the dealers as of 12 M of the first Monday of March in each year.

History: En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R. C. M. 1921; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1, Ch. 30, L. 1935; amd. Sec. 9, Ch. 72, L. 1937; amd. Sec. 2, Ch. 256, L. 1955; amd. Sec. 2, Ch. 245, L. 1963; amd. Sec. 1, Ch. 86, L. 1965; amd. Sec. 2, Ch. 232, L. 1967; amd. Sec. 3, Ch. 290, L. 1967; amd. Sec. 3, Ch. 296, L. 1967; amd. Sec. 1, Ch. 40, L. 1969; amd. Sec. 1, Ch. 180, L. 1969; amd. Sec. 6, Ch. 435, L. 1971; amd. Sec. 4, Ch. 405, L. 1973; amd. Sec. 5, Ch. 414, L. 1973. Cal. Pol. C. Sec. 3628.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 405 and once by Ch. 414.

Neither of the amendatory acts mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by the amendments.

Amendments

Chapter 232, Laws of 1967, added paragraph (c) to subsection (1) and made minor changes in style.

Chapter 290, Laws of 1967, added the second and third sentences to the first paragraph of subsection (2), except that Chapter 290 did not contain the words "and new mobile homes" now appearing in said third sentence; it also made minor style changes.

Chapter 296, Laws of 1967, inserted

the second sentence in subsection (1); added to subsection (1) the paragraph now designated (d); inserted "except mobile homes" in the first sentence of subsection (2); added the sentence now appearing as the final sentence of the first paragraph of subsection (2), except that Chapter 296 did not contain the words "new motor vehicles and" now appearing therein; it also inserted "Except that this paragraph shall not apply to an applicant for registration or re-registration of a mobile home" at the beginning of the second paragraph of subsection (2); inserted "other" before "motor vehicle so assessed" in the second paragraph of subsection (2); and made minor style changes.

Chapter 40, Laws of 1969, substituted "12 m." for "12 midnight" where used.

Chapter 180, Laws of 1969, in the second sentence of subsection (2), inserted "and purchasers means and includes dealers who apply for registration or re-registration of motor vehicles" before "except as otherwise provided by section 32-3315."

The 1971 amendment added paragraph (e) to subsection (1); substituted "12 midnight" for "12 m." where used; added subsection (4); and made minor changes in punctuation and phraseology.

Chapter 405, Laws of 1973, substituted

references to the state department of revenue for references to the county assessor.

Chapter 414, Laws of 1973, inserted references to campers and camper dealers in subdivision (1)(e) and subsection (4); and changed the time for assessment in subsection (4) from 12 midnight to 12 M.

Effective Dates

Section 3 of Ch. 232, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 1, 1967.

Section 2 of Ch. 40, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 19, 1969.

Section 2 of Ch. 180, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

Section 7 of Ch. 435, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 18, 1971.

Section 6 of Ch. 414, Laws 1973 read "This act is effective for the tax year 1974 and thereafter."

References

Swartz v. Berg, 147 M 178, 411 P 2d 736.

84-409. (2003) Statement—what to contain. The department of revenue or its agent must require from each person a statement under oath setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control at twelve o'clock m. on the first Monday in March. Such statement must be in writing, showing separately:

1 to 7. * * * [Same as parent volume.]

The fact that such statement is not required, or that a person has not made such statement under oath, or otherwise, does not relieve his property from taxation.

History: En. Sec. 14, p. 78, L. 1891; amd. Sec. 3701, Pol. C. 1895; re-en. Sec. 2511, Rev. C. 1907; re-en. Sec. 2003, R. C. M. 1921; amd. Sec. 5, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3629.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "county assessor" at the beginning of the section.

84-410. (2004) Department of revenue to furnish blanks, etc. The department of revenue must furnish its agents with blank forms of the statements provided for in the preceding section, affixing thereto an affidavit, which must be substantially as follows: "I, _____, do swear that I am a resident of the county of _____ (naming it), and that my post-office address is _____; that the above list contains a full and correct statement of all property subject to taxation, which I, or any firm of which I am a member, or any corporation, association, or company of which I am president, cashier, secretary, or managing agent, owned, claimed, possessed, or controlled at twelve o'clock m. on the first

Monday in March last, and which is not already assessed this year; and that I have not in any manner whatsoever transferred or disposed of any property, or placed any property out of said county or my possession for the purpose of avoiding any assessment upon the same, or of making this statement; and that the debts therein stated as owing by me are justly due and owing to others." The affidavit to the statement on behalf of a firm or corporation must state the principal place of business of the firm or corporation, and in other respects must conform substantially to the preceding form. The time when taxes become delinquent, and the time of the meeting of the county tax appeal board, must be stated in such form.

History: En. Sec. 15, p. 80, L. 1891; re-en. Sec. 3702, Pol. C. 1895; re-en. Sec. 2512, Rev. C. 1907; re-en. Sec. 2004, R. C. M. 1921; amd. Sec. 6, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3630.

partment of revenue" and "its agents" near the beginning of the section for "board of county commissioners" and "the assessor"; and substituted "tax appeal board" in the final sentence for "board of equalization."

Amendments

The 1973 amendment substituted "de-

84-411. (2005) Statement to be filled out and returned to agent of the department of revenue. The agent of the department of revenue may fill out the statement at the time he presents it, or he may deliver it to the person and require him, within an appointed time, to return the same to him, properly filled out. The agent must either in person or by mail deliver to the person making the statement a copy of the same, showing any corrections made thereto by the agent.

History: En. Sec. 16, p. 80, L. 1891; re-en. Sec. 3703, Pol. C. 1895; re-en. Sec. 2513, Rev. C. 1907; re-en. Sec. 2005, R. C. M. 1921; amd. Sec. 7, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3631.

Amendments

The 1973 amendment substituted references to the agent of the department of revenue for references to the county assessor.

84-412. (2006) General powers of department of revenue. The department of revenue has power:

1. To require any person in the state to make and subscribe an affidavit, giving his name and place of residence and post-office address.

2. To subpoena and examine any person in relation to any statement furnished to it, or which discloses property which is assessable in the state; and it may exercise this power in any county where the person whom it desires to examine may be found, but has no power to require such persons to appear before it in any other county than that in which the subpoena is served. Every person who refuses to furnish the statement hereinbefore required, or to make and subscribe such affidavit respecting his name and place of residence, or to appear and testify when requested so to do by the department, as above provided, for each and every refusal, and as often as the same is repeated, forfeits to the people of the state the sum of one hundred dollars, to be recovered by action brought in the name of the state in any police or justice's court. In case such affidavit shows the residence of the person making the same to be in any county other than that in which it is taken, or the statement discloses property in any county other than that in which it is made, the department must,

in the respective case, file the affidavit or statement in its office, and transmit a copy of the same, certified by it, to its agent in the county in which such residence or property is therein shown to be. All moneys recovered under the provisions of this section must be paid into the treasury of the county in which the property is located.

History: En. Sec. 17, p. 81, L. 1891; re-en. Sec. 3704, Pol. C. 1895; re-en. Sec. 2514, Rev. C. 1907; re-en. Sec. 2006, R. C. M. 1921; amd. Sec. 8, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3632.

Amendments

The 1973 amendment substituted refer-

ences to the state department of revenue and its agent for references to the county assessor; substituted references to the state for references to the county; substituted "the treasury of the county in which the property is located" for "the treasury of his county" at the end of the section; and made minor changes in phraseology.

84-413. (2007) Method of making assessment upon refusal of statement. If any person, after demand made by the department of revenue, neglects or refuses to give, under oath, the statement herein provided for, or to comply with the other requirements of this title, the department must note the refusal on the assessment book opposite his name, and must make an estimate of the value of the property of such person, and the value so fixed by the department must not be reduced by the county tax appeal board.

History: En. Sec. 18, p. 82, L. 1891; amd. Sec. 3705, Pol. C. 1895; re-en. Sec. 2515, Rev. C. 1907; re-en. Sec. 2007, R. C. M. 1921; amd. Sec. 9, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3633.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the county assessor; and substituted "county tax appeal board" for "board of county commissioners" at the end of the section.

84-414. (2008) Assessment of unknown or absent owners. If the owner or claimant of any property, not listed by another person, is absent or unknown, the department must make an estimate of the value of such property.

History: En. Sec. 19, p. 82, L. 1891; re-en. Sec. 3706, Pol. C. 1895; re-en. Sec. 2516, Rev. C. 1907; re-en. Sec. 2008, R. C. M. 1921; amd. Sec. 10, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3635.

Amendments

The 1973 amendment substituted "department" for "assessor."

84-415. (2009) Assessment of unknown or absent owners—in whose name property to be assessed. If the name of the absent owner is known to the department, the property must be assessed in his name; if unknown, the property must be assessed to unknown owners.

History: En. Sec. 20, p. 82, L. 1891; re-en. Sec. 3707, Pol. C. 1895; re-en. Sec. 2517, Rev. C. 1907; re-en. Sec. 2009, R. C. M. 1921; amd. Sec. 11, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3636.

Amendments

The 1973 amendment substituted "department" for "assessor."

84-427. (2021) Assessment of railroads, telegraph, telephone and electric light lines. Railroads operated or situated in one county, telegraph, telephone, and electric light lines and similar properties situated in one county, and their franchises; canals, ditches, and flumes, situated in one

county and the franchises of the same, must be listed and assessed in the county in which such property is located, and the department of revenue must require the owner of such property, or his agent, or any officer of a corporation owning the same, to make a verified statement containing a list of the number of miles such property is operated or situated in the county, and the value thereof.

History: En. Sec. 30, p. 83, L. 1891; re-en. Sec. 3719, Pol. C. 1895; re-en. Sec. 2529, Rev. C. 1907; amd. Sec. 1, Ch. 24, L. 1921; re-en. Sec. 2021, R. C. M. 1921; amd. Sec. 12, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted "and not assessed by the state board of equalization" following "Railroads operated or situated in one county" at the beginning of the section; and substituted "department of revenue" for "assessor."

84-428. (2022) Railroads—how assessed. The franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this state must be assessed by the state department of revenue as hereinafter provided. Other franchises, if granted by the authorities of a county or city, must be assessed in the county or city within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business.

History: En. Sec. 11, p. 76, L. 1891; re-en. Sec. 3696, Pol. C. 1895; re-en. Sec. 2508, Rev. C. 1907; re-en. Sec. 2022, R. C. M. 1921; amd. Sec. 4, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3628.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the first sentence.

84-429. (2023) Land—how assessed. All other taxable property must be assessed in the county, city, or district in which it is situated. Land must be assessed in parcels or subdivisions not exceeding six hundred and forty acres, and tracts of land containing more than six hundred and forty acres, which have been sectionized by the United States government, must be assessed by sections or fractions of sections.

The department of revenue or its agent must set aside one line in the assessment book for the description of each six hundred and forty acres of land, or less, the number of acres to be entered in one column, the description in another column, value in another column, value of improvements in another column, and the total in the total column. It must also set aside a line in the assessment book for the description of each town or city lot, the description to be entered in one column, the value in another column on the same line, the value of improvements in another column, and the total in the total column; provided, that all of the unimproved lots of the same value, situate in one block, or belonging to the same party, may be described and assessed in one line in the manner above provided for each lot. It is the intention hereby that each parcel and lot show in its own line, and opposite the description thereof, the separate value of the same and the value of the improvements thereon.

History: En. Sec. 12, p. 77, L. 1891; re-en. Sec. 3697, Pol. C. 1895; re-en. Sec. 2509, Rev. C. 1907; re-en. Sec. 2023, R. C. M. 1921; amd. Sec. 13, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3628.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the assessor.

84-429.7. Classification and appraisal—duties of the department of revenue. It is hereby made the duty of the state department of revenue to accomplish the following:

a to c. * * * [Same as parent volume.]

A record thereof must be kept upon such maps, plats and forms, and entered in such books of record as may be prescribed by the state department of revenue. Such maps, plats, forms and books of record shall be official records of the state. A certified copy of all such records as may be desired shall be furnished to the state department of revenue.

It shall be the duty of the state department of revenue to maintain current, the classification of all taxable lands and appraisal of city and town lots, and rural and urban improvements, as provided for herein.

History: En. Sec. 1, Ch. 191, L. 1957; amd. Sec. 14, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the board of county commissioners and state board of equalization; deleted "in such manner as the state board of equalization may direct" from the preliminary clause; substituted "state" for "county" at the end of the second sentence after the lettered clauses; deleted "and the state board of equalization shall provide for the payment to the several

counties of the cost of preparing such copy of the record so provided for, as they may require" at the end of the paragraph following the lettered clauses; and deleted "After compliance with the other provisions of this act" from the beginning of the last paragraph.

Jurisdiction of District Court

District court acted beyond its jurisdiction by enjoining board of equalization from revising, grading and valuation of nonirrigated farm land pursuant to this section. State ex rel. Lord v. District Court, 154 M 269, 463 P 2d 323.

84-429.8. Repealed.

Repeal

Section 84-429.8 (Sec. 2, Ch. 191, L. 1957; Sec. 1, Ch. 23, L. 1965; Sec. 15, Ch. 405, L. 1973), relating to establishment of the "property tax administration fund"

and the tax levy therefor, was repealed by Sec. 1, Ch. 141, Laws of 1974, effective March 11, 1974, and affecting taxes levied and assessed after January 1, 1974.

84-429.9. Assessments to be made on classification and appraisal. The assessments of all lands, city and town lots, and all improvements must be made on the classification and appraisal as made or caused to be made by the department of revenue.

History: En. Sec. 3, Ch. 191, L. 1957; amd. Sec. 16, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "must be made" after "improvements" for "The

county assessor must base" at the beginning of the section; inserted "or caused to be made" near the end of the section; and substituted "department of revenue" for "board of county commissioners" at the end of the section.

84-429.10. Repealed.

Repeal

Section 84-429.10 (Sec. 4, Ch. 191, L. 1957), relating to initiation of the classi-

fication and appraisal, was repealed by Sec. 120, Ch. 405, Laws 1973.

84-429.11. Notice of classification and appraisal to owners—appeals. It shall be the duty of the department of revenue to cause to be mailed to each owner a notice of the classification of the land owned by him and the appraisal of the improvements thereon. If the owner of any land and improvements be dissatisfied with the classification of his land or the ap-

praisal of the improvements the department of revenue shall give reasonable notice to such taxpayer of the time and place of hearing and hear any testimony or other evidence which the taxpayer may desire to produce at such time and afford the opportunity to other interested persons to produce evidence at such hearing and thereafter the department of revenue shall determine the true and correct classification of such land or appraisal of such improvements and forthwith notify the taxpayer of their determination and when so determined the land shall be classified and improvements appraised in the manner ordered by the department of revenue. If any property owner shall feel aggrieved at the classification and/or the appraisal so made by the department of revenue he shall have the right to appeal to the county tax appeal board and then to the state tax appeal board whose findings shall be final subject to the right of review in the proper court or courts.

History: En. Sec. 5, Ch. 191, L. 1957; amd. Sec. 17, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the board of county commissioners; and substituted "county tax appeal board and then to the state tax appeal board" for "state board of equalization" in the final sentence.

State Directives

Boards of county commissioners could not ignore directives of state board of equalization on subject of timberland valuation and make their own valuation on theory that state board's directives were

invalid because not supported by evidence since validity would have to be adjudicated and since, in any event, county boards do not have power of increasing valuations. *State ex rel. Conrad v. Managhan*, 157 M 335, 485 P 2d 948.

Summary Judgment

In declaratory judgment action in which notice of reclassification was found not to comply with this section, district court did not abuse its discretion in granting plaintiff-landowners' motion for summary judgment without considering further issues raised by plaintiffs since they lacked standing as to those issues. *Mittelstadt v. Buckingham*, 156 M 407, 480 P 2d 831.

84-429.12. Classification and appraisal—general and uniform methods.

It is hereby made the duty of the state department of revenue to implement the provisions of this act by providing:

1. For a general and uniform method of classifying lands in the state of Montana for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes.

All lands shall be classified according to their use or uses and graded within each class according to soil and productive capacity. In such classification work, use shall be made of soil surveys and maps and all other pertinent available information. All lands must be classified by forty (40) acre tracts or fractional lots.

All agricultural lands must be classified and appraised as agricultural lands without regard to the best and highest value use of adjacent or neighboring lands.

2 to 4. * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 191, L. 1957; amd. Sec. 3, Ch. 512, L. 1973; amd. Sec. 5, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 512 and once by Ch. 516. Chapter 512 made the same changes as did

Ch. 516 and made another change as well. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 512, Laws of 1973, substituted

"department of revenue" for "board of county commissioners" in the preliminary clause; and added the third paragraph to subsection 1.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization" in the preliminary clause.

Basis for Assessment

County board of equalization properly assessed plaintiff's property on basis of "market value" rather than on basis of agricultural land, even though it was being used for agricultural purposes, where property was within commercial area and its value was much greater than that assigned to agricultural property. *Mohland v. State Board of Equalization*, 155 M 49, 466 P 2d 582, certiorari denied, 400 US 940, 91 S Ct 232.

Board Authority

County board of equalization possesses jurisdiction and authority to direct and sanction classification, appraisal and assessment of rural and urban improvements using "market value" as basis and classifying them according to use or uses other than those to which such land is actually devoted. *Mohland v. State Board of Equalization*, 155 M 49, 466 P 2d 582, certiorari denied, 400 US 940, 91 S Ct 232.

Boards of county commissioners cannot ignore directives of state board of equalization on subject of timberland valuation and make their own valuation on theory that state board's directives were invalid because not supported by evidence since validity would have to be adjudicated and since, in any event, county boards do not have power of increasing valuations. *State ex rel. Conrad v. Managhan*, 157 M 335, 485 P 2d 948.

84-437.1. Legislative intent as to agricultural property. Since the market value of many farm properties is based upon speculative purchases which do not reflect the productive capability of farms, it is the legislative intent that bona fide farm properties shall be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

History: En. Sec. 1, Ch. 512, L. 1973.

Title of Act

An act to provide that agricultural land shall be classified, appraised, and assessed according to its value for agricultural

purposes without regard to the value it may have for other purposes; and defining agricultural lands, establishing procedure and providing a penalty; amending sections 84-401 and 84-429.12, R. C. M. 1947.

84-437.2. Eligibility of land for valuation as agricultural. Land which is actively devoted to agricultural use shall be eligible for valuation, assessment and taxation as herein provided each year it meets any of the following qualifications:

(1) It is being actively devoted to agriculture or it has been historically devoted to agricultural use and it has been valued and assessed as agricultural land for the taxable years 1971, 1972 and 1973 and it continues to be devoted to agricultural use which means;

(a) It is used to produce crops including, but not limited to, grains, feed crops, fruits, vegetables; or

(b) It is used for grazing; or

(c) It is in a crop-land retirement program; or

(2) The area of such land is not less than five (5) contiguous acres when measured in accordance with the provisions of section 8, [84-437.6], when the gross value of grazing or crops produced for sale or home consumption thereon together with any payments received under a crop-land retirement program totals at least one thousand (\$1,000) per year; or

(3) It agriculturally produces for sale or home consumption the equivalent of fifteen per cent (15%) or more of the owners' annual gross income.

History: En. Sec. 4, Ch. 512, L. 1973; amd. Sec. 2, Ch. 56, L. 1974.

Amendments

The 1974 amendment inserted "any of" following "it meets" in the introductory phrase; expanded subdivision (1) which read: "It is being actively devoted to

agriculture"; substituted "value of grazing or crops produced for sale or home consumption" for "value of grazing and field crops" in subdivision (2); inserted "for sale or home consumption" in subdivision (3); and deleted a subdivision pertaining to the application by the owner of land for valuation as agricultural.

84-437.3. Agricultural uses only considered in valuation. In valuing land as agricultural, the department of revenue, shall consider only those indicia of value which such land has for agricultural use.

History: En. Sec. 5, Ch. 512, L. 1974; amd. Sec. 3, Ch. 56, L. 1974.

Amendments

The 1974 amendment substituted "In valuing land as agricultural" for "In classifying land which qualifies as land

actively devoted to agricultural use under the test prescribed by this act, and as to which the owner thereof has made timely application for valuation, assessment and taxation hereunder for the tax year in issue" at the beginning of the section.

84-437.4. Roll-back tax—computation. When land which is or has been in agricultural use and is or has been valued, assessed and taxed under the provisions of this act, is applied to a use other than agricultural, it shall be subject to an additional tax hereinafter referred to as the "roll-back tax," which tax shall be a lien upon the land and become due and payable at the time of the change in use.

As used in this act, the word "roll-back" means the period preceeding the change in use of the land not to exceed four (4) years during which the land was valued, assessed and taxed under the provisions of this act.

The assessor shall ascertain the following in determining the amount of the roll-back tax chargeable on land which has undergone a change in use:

(1) the full and fair value of the land as determined by the department of revenue under the valuation standard applicable to land in the county not valued, assessed and taxed under the provisions of this act;

(2) the amount of the land assessment as unsubdivided and unimproved land for the period of the roll-back, by multiplying such full and fair market value by the number of years included in the roll-back and by multiplying the product obtained, by the assessment ratio in effect in the year in which the change in use of the land is made as determined by the state;

(3) the average mill levy applied in the taxing district in which the land is located by dividing the aggregate mill levy actually applied in each respective year of the roll-back by the number of years, included in the roll-back; and

(4) the amount of the roll-back tax by multiplying the taxable value computed from the amount of the assessment determined under subsection (2) hereof by the average mill levy determined under subsection (3) hereof, less the amount of real property taxes actually paid during the period of the roll-back.

History: En. Sec. 6, Ch. 512, L. 1973.

84-437.5. Roll-back tax procedures governed by nonagricultural provisions. The assessment of the roll-back tax imposed by section 5 [84-437.3], the attachment of the lien for such taxes, and the right of the owner or other interested party to review any judgment of the department of revenue or local tax appeal board affecting such roll-back tax, shall be governed by the procedures provided for the assessment and taxation of real property not valued, assessed and taxed under the provisions of this act. The roll-back tax collected shall be paid into the county treasury and paid by the treasurer to the various taxing units pro rata in accordance with the levies for the current year.

History: En. Sec. 7, Ch. 512, L. 1973.

84-437.6. Improvements on agricultural land. In determining the total area of land actively devoted to agricultural use there shall be included the area of all land under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, irrigation ditches and like facilities, but land under and such additional land as may be actually used in connection with the farmhouse shall be excluded in determining such total area.

History: En. Sec. 8, Ch. 512, L. 1973.

84-437.7. Repealed.

Repeal

Section 84-437.7 (En. Sec. 9, Ch. 512, L. 1973), relating to the application for valuation as agricultural land, was repealed by Sec. 6, Ch. 56, Laws 1974.

84-437.8. Continuance of valuation as agricultural land—roll-back tax attaching on change of use. Continuance of valuation, assessment and taxation under this act shall depend upon continuance of the land in agricultural use and compliance with the other requirements of this act and not upon continuance in the same owner of title to the land. Liability to the roll-back tax shall attach when a change in use of the land occurs but not when a change in ownership of the title takes place if the new owner continues the land in agricultural use, under the conditions prescribed in this act.

History: En. Sec. 10, Ch. 512, L. 1973.

84-437.9. Roll-back tax on change of use of part of tract. Separation or split off of a part of the land which is being valued, assessed and taxed under this act, either by conveyance or other actions of the owner of such land, for a use other than agricultural, shall subject the land so separated to liability for the roll-back tax applicable thereto, but shall not impair the right of the remaining land to continuance of valuation, assessment and taxation hereunder, provided it meets the minimum requirements of this act.

History: En. Sec. 11, Ch. 512, L. 1973.

84-437.10. Agricultural land taken under eminent domain. The taking of land which is being valued, assessed and taxed under this act by right

of eminent domain shall not subject the land so taken to the roll-back tax herein imposed.

History: En. Sec. 12, Ch. 512, L. 1973.

84-437.11. Tract crossing county line considered as whole. Where contiguous land in agricultural use in one ownership is located in more than one (1) county, compliance with the minimum requirements shall be determined on the basis of the total area and value of farm crops on such land and not the area or value of farm crops on land which is located in the particular county.

History: En. Sec. 13, Ch. 512, L. 1973.

84-437.12. Factual details as to agricultural land to be shown on tax list. The factual details to be shown on the assessor's tax list and duplicate with respect to land which is being valued, assessed and taxed under this act shall be the same as those set forth by the assessor with respect to other taxable property in the county.

History: En. Sec. 14, Ch. 512, L. 1973.

84-437.13. Rules—regulations—forms. The state department of revenue is empowered to promulgate such rules and regulations and to prescribe such forms as it shall deem necessary to effectuate the purposes of this act.

History: En. Sec. 15, Ch. 512, L. 1973.

84-437.14. Violation as misdemeanor. Any person who violates any provision of this act shall be guilty of a misdemeanor.

History: En. Sec. 16, Ch. 512, L. 1973.

84-437.15. Reclassification by department of revenue. The department of revenue or its agent may reclassify land as nonagricultural upon giving due notice to the property owner under the provisions of section 84-429.11. Upon notice of a change in classification of land from agricultural to another use, the property owner may petition the department of revenue to reclassify the land as agricultural by completing a form prescribed by the department of revenue and by producing whatever information is necessary to prove that the subject land meets the definition of agricultural land embodied in section 84-437.2, R. C. M. 1947.

History: En. 84-437.15 by Sec. 4, Ch. 56, L. 1974.

Title of Act

An act amending sections 84-401, 84-437.2, 84-437.3, R. C. M. 1947, to provide that agricultural land shall be classified,

appraised, and assessed according to its value for agricultural purposes; repealing section 84-437.7; providing an effective date; and to provide a refund for all late application penalties collected under subsection (4)(a) of section 84-437.2, R. C. M. 1947, as it was before these amendments.

84-437.16. Reclassification by owner. Whenever land which is or has been in agricultural use and is or has been valued, assessed and taxed for agricultural use is applied to a use other than agricultural, the owner shall notify the county assessor and the county assessor shall cause the following

statement to be recorded by the county recorder: "On the day of, 19....., this land became subject to the roll-back tax imposed by section 84-437.4."

History: En. 84-437.16 by Sec. 5, Ch. 56, L. 1974.

Repealing Clause

Section 6 of Ch. 56, Laws 1974 read: "Section 84-437.7 is repealed."

84-437.17. Refund of late filing fee. The county commissioners shall refund twenty-five dollars (\$25) to each person who paid a late filing fee under the provisions of section 84-437.2(4)(a), R. C. M. 1947.

History: En. 84-437.17 by Sec. 7, Ch. 56, L. 1974.

Compiler's Notes

Section 84-437.2(4)(a) referred to in this section was deleted by the 1974 amendment of Sec. 84-437.2. The subdivision read "Application by the owner of the land for valuation hereunder is submitted on or before October 1 of the year immediately preceding the tax year to the county assessor in which such land is situated on the form prescribed by the state

department of revenue. The county assessor shall continue to accept applications filed within sixty (60) days after October 1 upon payment of a late filing fee in the amount of twenty-five dollars (\$25), which shall be paid to the county treasurer."

Effective Date

Section 8 of Ch. 56, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved February 28, 1974.

84-439. (2033) Property concealed, misrepresented, etc. Any property willfully concealed, removed, transferred, or misrepresented by the owner or agent thereof to evade taxation, upon discovery, must be assessed at not exceeding ten times its value, and the assessment so made must not be reduced by the county tax appeal board.

History: Ap. p. Sec. 33, p. 84, L. 1891; amd. Sec. 3722, Pol. C. 1895; re-en. Sec. 2541, Rev. C. 1907; re-en. Sec. 2033, R. C. M. 1921; amd. Sec. 18, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3648.

Amendments

The 1973 amendment substituted "county tax appeal board" for "board of county commissioners" at the end of the section.

84-440. (2034) Property having escaped assessment. Any property discovered by the department of revenue to have escaped assessment may be assessed at any time, if such property is in the ownership or under the control of the same person who owned or controlled it at the time it should have been assessed.

History: Ap. p. Sec. 33, p. 84, L. 1891; amd. Sec. 3723, Pol. C. 1895; re-en. Sec. 2542, Rev. C. 1907; re-en. Sec. 2034, R. C. M. 1921; amd. Sec. 19, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3649.

Amendments

The 1973 amendment substituted "department of revenue" for "assessor."

84-441. (2035) Supplemental assessment. When any personal property liable to taxation is brought into a county at any time after the second Monday of July, and such property has not been assessed for that year, it must be listed and assessed the same as if it had been in the county at the time of the regular assessment, and the tax must be collected, as provided in this code, at any time.

History: En. Sec. 4022, Pol. C. 1895; re-en. Sec. 2740, Rev. C. 1907; re-en. Sec. 2035, R. C. M. 1921; amd. Sec. 20, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted "by the assessor" following "must be collected" near the end of the section.

84-443 to 84-447. (2037 to 2041) Repealed.**Repeal**

Sections 84-443 to 84-447 (Secs. 40 to 42, p. 87, L. 1891; Secs. 3734 to 3736, 4012, Pol. C. 1895; Sec. 1, Ch. 44, L. 1909; Sec. 1, Ch. 43, L. 1925; Sec. 1, Ch. 135, L. 1929;

Sec. 1, Ch. 56, L. 1935; Sec. 1, Ch. 14, L. 1943; Sec. 1, Ch. 115, L. 1949), relating to duties and liabilities of the county assessor and his deputies, were repealed by Sec. 120, Ch. 405, Laws 1973.

84-448. (2042) Annual settlements. The department of revenue, county attorney and county treasurer must annually, on the first Monday of January, make a settlement with the county clerk of all transactions connected with the revenue for the previous year, and every county treasurer, on the expiration of his office, must make such settlement.

History: En. Sec. 199, p. 128, L. 1891; re-en. Sec. 4016, Pol. C. 1895; re-en. Sec. 2734, Rev. C. 1907; re-en. Sec. 2042, R. C. M. 1921; amd. Sec. 21, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "The department of revenue" for "Every assessor" at the beginning of the section.

84-449. (2043) Department of revenue to collect farm statistics. It shall be the duty of the department of revenue, at the time of making the annual assessment of property to collect such statistics in relation to farm products and agricultural resources from each farm owner, operator or renter as shall be called for by the commissioner of agriculture and on blanks to be prepared and furnished by the commissioner of agriculture.

History: En. Sec. 1, Ch. 187, L. 1921; re-en. Sec. 2043, R. C. M. 1921; amd. Sec. 22, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "the department of revenue" for "each county assessor and his deputies" near the beginning of the section.

84-450. (2044) Delivery to commissioner of agriculture. The original blanks upon which the statistics are gathered by the department of revenue shall be returned to the commissioner of agriculture immediately on completion of the assessment work and not later than July first each year.

History: En. Sec. 2, Ch. 187, L. 1921; re-en. Sec. 2044, R. C. M. 1921; amd. Sec. 23, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "county assessor and his deputies"; and made minor changes in phraseology.

84-451. (2045) Statistics, how obtained. If for any reason the department of revenue is unable to obtain the statistics from any farm owner, operator or renter, it shall obtain them from the most reliable source, so that the returns may be complete.

History: En. Sec. 3, Ch. 187, L. 1921; re-en. Sec. 2045, R. C. M. 1921; amd. Sec. 24, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "county assessor or his deputy"; and made a minor change in style.

84-452. (2046) Penalty for refusal to furnish statistics. Any farm owner, operator, or renter refusing to furnish the information called for in section 84-449, or willfully furnishes fraudulent information to the department of revenue, upon proper request therefor, shall be guilty of a

misdeemeanor, and upon conviction thereof shall be fined in a sum not less than ten dollars, nor more than one hundred dollars, and cost of prosecution.

History: En. Sec. 4, Ch. 187, L. 1921; re-en. Sec. 2046, R. C. M. 1921; amd. Sec. 25, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "county assessor or his deputy."

84-453. (2047) Repealed.

Repeal

Section 84-453 (Sec. 5, Ch. 187, L. 1921), relating to penalty for refusal or willful

neglect of duty by the county assessor or deputy, was repealed by Sec. 120, Ch. 405, Laws 1973.

CHAPTER 5—ASSESSMENT BOOK—FORM—CONTENTS—DISPOSAL

Section

- 84-501. Property—how listed.
- 84-502.1. Form of assessment book.
- 84-504. Map book.
- 84-505. Assessment and map book delivered to and kept by clerk.
- 84-506. Statement by agent to the department of revenue.
- 84-507. Penalty for failure of agent of department of revenue to complete assessment book and transmit statement.
- 84-509. Department to furnish assessor maps.
- 84-510. List of lands sold by state to be transmitted by state land agent.
- 84-511. Defects in form of assessment book may be supplied.
- 84-515. Fines and forfeitures to be paid to county treasurer.

84-501. (2048) Property—how listed. The state department of revenue must prepare an assessment book with appropriate headings, alphabetically arranged, in which must be listed all property within the state, and in which must be specified in separate columns, under the appropriate head: 1 to 15. * * * [Same as parent volume.]

History: En. Sec. 34, p. 84, L. 1891; re-en. Sec. 3724, Pol. C. 1895; re-en. Sec. 2543, Rev. C. 1907; re-en. Sec. 2048, R. C. M. 1921; amd. Sec. 26, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3650.

Amendments

The 1973 amendment substituted "state department of revenue" for "assessor" in

the preliminary clause; deleted "unless otherwise directed by the state board of equalization" following "alphabetically arranged" in the preliminary clause; substituted "state" for "county" in the preliminary clause; and deleted subdivision 16 covering other items required by the state board of equalization.

84-502. (2049) Repealed.

Repeal

Section 84-502 (Sec. 3725, Pol. C. 1895), relating to the form of the assessment

book, was repealed by Sec. 120, Ch. 405, Laws 1973. For new law, see sec. 84-502.1.

84-502.1. Form of assessment book. The form of the assessment book must be as directed by the state department of revenue.

History: En. 84-502.1 by Sec. 27, Ch. 405, L. 1973.

Title of Act

An act to provide for a general revision of the tax laws of Montana to implement article VIII, sections 3 and 7 of the 1972 Montana constitution by designating the state department of revenue as the tax

administration agency for the state of Montana, by creating a state tax appeal board, by designating county assessors as agents of the state department of revenue, and by providing for county tax appeal boards; and to repeal sections 84-211, 84-429.10, 84-443, 84-444, 84-445, 84-446, 84-447, 84-453, 84-502, 84-503, 84-4732, 84-4733, 84-4734, and 84-4735.

84-503. (2050) Repealed.**Repeal**

Section 84-503 (Sec. 1697, 5th Div. Comp. Stat. 1887; Sec. 19, p. 91, Ex. L. 1887; Sec. 36, p. 86, L. 1891), relating to the

county assessor's affidavit on completion of the assessment book, was repealed by Sec. 120, Ch. 405, Laws 1973.

84-504. (2051) Map book. The department of revenue must, in a map book, make a plat of the various blocks within any incorporated city or town, and mark thereon, in each subdivision, the name of the person to whom it is assessed.

History: En. Sec. 3727, Pol. C. 1895; re-en. Sec. 2546, Rev. C. 1907; re-en. Sec. 2051, R. C. M. 1921; amd. Sec. 28, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "assessor"; and deleted "when directed so to do by the board of commissioners" following "The department of revenue must."

84-505. (2052) Assessment and map book delivered to and kept by clerk. As soon as completed, the assessment book, together with the map book and statements, must be delivered to the county clerk, who must immediately give notice thereof, and of the time the county tax appeal board will meet to consider protests concerning assessments, by publication in a newspaper, if any is printed in the county; if none, then in such manner as the board may direct; and in the meantime the assessment book must remain in his office for the inspection of all persons interested.

History: En. Sec. 37, p. 86, L. 1891; re-en. Sec. 3728, Pol. C. 1895; re-en. Sec. 2547, Rev. C. 1907; re-en. Sec. 2052, R. C. M. 1921; amd. Sec. 29, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3654.

Amendments

The 1973 amendment substituted "county tax appeal board" for "board of commissioners"; and substituted "consider protests concerning assessments" for "equalize assessments."

84-506. (2053) Statement by agent to the department of revenue. On the second Monday in July in each year, the agent of the department of revenue in each county must transmit to the state department of revenue a statement, showing:

1 to 4. * * * [Same as parent volume.]

History: En. Sec. 3729, Pol. C. 1895; re-en. Sec. 2548, Rev. C. 1907; re-en. Sec. 2053, R. C. M. 1921; amd. Sec. 30, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3655.

Amendments

The 1973 amendment substituted "agent of the department of revenue in" for "assessor of"; and substituted "state department of revenue" for "state board of equalization" in the preliminary clause.

84-507. (2054) Penalty for failure of agent of department of revenue to complete assessment book and transmit statement. Every agent of the department of revenue who fails to complete his assessment book, or who fails to transmit the statement mentioned in the preceding section to the state department of revenue, forfeits the sum of one thousand dollars to be recovered on his official bond, for the use of the department, or to be deducted from his salary by the director of revenue.

History: En. Sec. 3730, Pol. C. 1895; re-en. Sec. 2549, Rev. C. 1907; re-en. Sec. 2054, R. C. M. 1921; amd. Sec. 31, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3656.

Amendments

The 1973 amendment substituted "agent of the department of revenue" for "assessor"; substituted "department of reve-

nue" for "board of equalization"; substituted "department" for "county"; and substituted "director of revenue" for "board of county commissioners."

84-509. (2056) Department to furnish assessor maps. The department of revenue must provide maps for the use of its agents, showing the private lands owned or claimed in the county, and if surveyed under authority of the United States, the divisions and subdivisions of the survey. Maps of cities and villages or school districts may in like manner be provided. The cost of making such maps is a state charge, and must be paid from the state general fund.

History: En. Sec. 3732, Pol. C. 1895; re-en. Sec. 2551, Rev. C. 1907; re-en. Sec. 2056, R. C. M. 1921; amd. Sec. 32, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3658.

Amendments

The 1973 amendment substituted "department of revenue" for "board of county commissioners"; substituted "its agents" for "the assessor"; and substituted "state" for "county" in two places in the last sentence.

84-510. (2057) List of lands sold by state to be transmitted by state land agent. On or before the first Monday in March in each year, the state land agent must make out and transmit to the department of revenue where lands or lots lie that may have been sold by the state, for which certificates of purchase, patents, or deeds have issued, during the year preceding, certified lists of such lands or lots, giving a description thereof by divisions or subdivisions, or lots and blocks, together with the names of the purchasers thereof.

History: En. Sec. 3733, Pol. C. 1895; re-en. Sec. 2552, Rev. C. 1907; re-en. Sec. 2057, R. C. M. 1921; amd. Sec. 33, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3659.

Amendments

The 1973 amendment substituted "department of revenue" for "assessor of each county."

84-511. (2058) Defects in form of assessment book may be supplied. Omissions, errors, or defects in form in any original or duplicate assessment book, when it can be ascertained therefrom what was intended, may, with the consent of the county attorney, be supplied or corrected by the department of revenue at any time prior to the sale for delinquent taxes, and after the original assessment was made.

History: En. Sec. 193, p. 127, L. 1891; re-en. Sec. 4010, Pol. C. 1895; re-en. Sec. 2728, Rev. C. 1907; re-en. Sec. 2058, R. C. M. 1921; amd. Sec. 34, Ch. 405, L. 1973, Cal. Pol. C. Sec. 3881.

Amendments

The 1973 amendment substituted "department of revenue" for "assessor."

84-515. (2062) Fines and forfeitures to be paid to county treasurer. Except for the forfeiture described in section 84-507, R. C. M. 1947, all fines, forfeitures, and penalties incurred by a violation of any of the provisions of this title must be paid into the treasury for the use of the county where the person against whom the recovery is had resides.

History: En. Sec. 198, p. 127, L. 1891; re-en. Sec. 4015, Pol. C. 1895; re-en. Sec. 2733, Rev. C. 1907; re-en. Sec. 2062, R. C. M. 1921; amd. Sec. 35, Ch. 405, L. 1973.

Amendments

The 1973 amendment inserted "Except for the forfeiture described in section 84-507, R. C. M. 1947" at the beginning of the section; and made a minor change in phraseology.

CHAPTER 6—EQUALIZATION OF TAXES AND COUNTY TAX APPEAL BOARD

Section

- 84-601. County tax appeal board—when to hear protests.
- 84-602. Equalization of assessments.
- 84-603. Application for reduction in valuations.
- 84-604. Examination of applicant.
- 84-605. Change of valuation of class of property—hearing necessary.
- 84-606. Witnesses may be subpoenaed.
- 84-607. Agent to be present—statement of property not assessed.
- 84-608. State department of revenue to use records in equalizing.
- 84-609. Department may direct assessment in certain instances.
- 84-610. Department must keep record of proceedings and make oath.

84-601. (2113) County tax appeal board—when to hear protests.

The board of county commissioners of each county shall appoint a three (3) member county tax appeal board. The members of each tax appeal board shall be residents of the county in which they serve; they shall serve four (4) year terms and shall effective July 1, 1973, receive compensation of twenty-five dollars (\$25) per day and travel expenses only when the county tax appeal board is in session to hear taxpayers' appeals from property tax assessments or attending meetings called by the state tax appeal board. Travel expenses and compensation shall be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards shall be furnished by the county. All other incidental expenses will be paid from the appropriation of the state tax appeal board. The first term shall run from July 1, 1973, through December 31, 1976. The county tax appeal board must meet on the third Monday of July in each year to hear protests concerning assessments made by the department of revenue. It must continue in session for that purpose from time to time until the business of hearing protests is disposed of, but not later than the second Monday in August. In connection with any such appeal, the county tax appeal board shall have the authority to change any assessment or fix the assessment at some other level.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2572, Rev. C. 1907; re-en. Sec. 2113, R. C. M. 1921; amd. Sec. 36, Ch. 405, L. 1973; amd. Sec. 1, Ch. 38, L. 1974. Cal. Pol. C. Sec. 3672.

assessment book and equalize the assessment of property in the county" at the end of the fifth sentence; substituted "hearing protests" in the sixth sentence for "equalization"; and added the last sentence.

The 1974 amendment substituted "effective July 1, 1973, receive compensation of twenty-five dollars (\$25.00) per day and travel expenses" in the second sentence for "receive travel expenses and per diem"; added "or attending meetings called by the state tax appeal board" at the end of the second sentence; substituted "compensation" for "per diem" in the third sentence; inserted the fourth sentence; and made a minor change in punctuation.

Amendments

The 1973 amendment substituted the first four sentences for "The board of county commissioners is the county board of equalization and"; inserted "The county tax appeal board" at the beginning of the fifth sentence; substituted "hear protest concerning assessments made by the department of revenue" for "to examine the

84-602. (2114) Equalization of assessments. The department of revenue has power after giving notice, in writing, to the taxpayer, by registered or certified mail, addressed to him at his last known place of residence, of its intention to increase or lower his assessment contained in the assessment book, so as to equalize the assessment of the property contained

therein and make the assessment conform to the true value of such property in money, which notice shall specify the date and hour when he may appear and be heard thereon, which date shall not be less than five (5) days from date of mailing such notice, and immediately after reaching a decision, the department shall notify the taxpayer, in writing, of such decision, specifying the change, if any, made in the assessment; said notice to be given by registered or certified mail, addressed to the taxpayer at his last known place of residence. The department also has power to raise or lower the valuation of all the property in a class by a certain percentage, in the event that any class of property is assessed as a class, at more or less than its actual value, by its agent and the valuation of such property within the county demands a general reclassification.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; this section en. Sec. 2573, Rev. C. 1907; re-en. Sec. 2114, R. C. M. 1921; amd. Sec. 1, Ch. 43, L. 1927; amd. Sec. 1, Ch. 187, L. 1933; amd. Sec. 1, Ch. 196, L. 1957; amd. Sec. 37, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted refer-

ences to the department of revenue for references to the board of county commissioners; inserted "to raise or lower the valuation of all the property in a class by a certain percentage" in the second sentence; substituted "its agent" for "the county assessor" in the second sentence; and deleted "by raising or lowering all of the property in said class a certain percentage, the same may be done by the board of commissioners" from the end of the second sentence.

DECISIONS UNDER FORMER LAW

Powers of Board of County Commissioners

Boards of county commissioners could not ignore directives of state board of equalization on subject of timberland valuation and make their own valuation on theory that state board's directives were

invalid because not supported by evidence since validity would have to be adjudicated and since, in any event, county boards do not have power of increasing valuations. State ex rel. Conrad v. Managhan, 157 M. 335, 485 P. 2d 948.

84-603. (2115) Application for reduction in valuations. No reduction must be made in the valuation of property unless the party affected thereby, or his agent, makes and files with the county tax appeal board on or before the 1st day of August, a written application therefor. Said application shall state the post-office address of the applicant, shall specifically describe the property involved and shall state the facts upon which it is claimed such reduction should be made. The department of revenue shall, however, have the right to raise or lower the valuation of all of one class of property in a county, as provided in the preceding section.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2574, Rev. C. 1907; re-en. Sec. 2115, R. C. M. 1921; amd. Sec. 2, Ch. 187, L. 1933; amd. Sec. 1, Ch. 103, L. 1945; amd. Sec. 2, Ch. 196, L. 1957; amd. Sec. 38, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3674.

Amendments

The 1973 amendment inserted "county tax appeal" before "board" in the first sentence; deleted "verified by his oath" from the end of the first sentence; and substituted "department of revenue" for "board of county commissioners" at the beginning of the last sentence.

84-604. (2116) Examination of applicant. Before the county tax appeal board grants any application or makes any reduction applied for, it must examine on oath, the person or agent making the application, touch-

ing the value of the property of each person. No reduction must be made unless such person or agent makes an application, as provided in the preceding section, and attends and answers all questions pertinent to the inquiry. The testimony of all witnesses upon such hearing must be taken in shorthand or by stenotype or electronically recorded and preserved for one (1) year. If the decision of the county tax appeal board is appealed, all testimony must be transcribed or otherwise reduced to writing and forwarded together with all exhibits to the state tax appeal board. The date of hearing, the proceedings before the board, and the decision, must be entered upon the minutes of the board, and the board shall notify the applicant of its decision, by registered or certified mail within three (3) days thereafter. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than three (3) days after the third Monday in August.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2575, Rev. C. 1907; re-en. Sec. 2116, R. C. M. 1921; amd. Sec. 3, Ch. 187, L. 1933; amd. Sec. 3, Ch. 196, L. 1957; amd. Sec. 39, Ch. 405, L. 1973; amd. Sec. 2, Ch. 38, L. 1974. Cal. Pol. C. Sec. 3675.

Amendments

The 1973 amendment inserted "county tax appeal" before "board" at the begin-

ning of the first sentence; deleted "except where the investigation is made by the county commissioners, as such board of equalization, and the change applies to all of certain class of property in the county" from the end of the second sentence; and added the last sentence.

The 1974 amendment substituted "taken in shorthand or by stenotype or electronically recorded and preserved for one (1) year" at the end of the third sentence for "reduced to writing and preserved, and transcribed if taken in shorthand or stenotype"; and inserted the fourth sentence.

84-605. (2116.1) Change of valuation of class of property—hearing necessary. The state department of revenue may hold a public hearing to determine the value of any class of property in any county and shall have authority to raise or lower the value of any class of property on the basis of testimony adduced at such hearing.

History: En. Sec. 4, Ch. 187, L. 1933; amd. Sec. 40, Ch. 405, L. 1973.

Amendments

The 1973 amendment completely rewrote this section. For prior law, see parent volume.

84-606. (2117) Witnesses may be subpoenaed. Upon the hearing of the application the department may subpoena such witnesses, hear and take such evidence in relation to the subject pending, as in its discretion it may deem proper.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2576, Rev. C. 1907; re-en. Sec.

2117, R. C. M. 1921; amd. Sec. 6, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3676.

Amendments

The 1973 amendment substituted "department" for "board."

84-607. (2118) Agent to be present—statement of property not assessed. During the hearing of the department the agent of the state who assessed the property whose testimony is needed must be present and may make any statement, or introduce and examine witnesses on questions before the department, and shall, when requested by the department

or any party to the proceeding, furnish to the department a written statement showing the basis for his valuation of the property under consideration at the hearing; and shall, when requested by the department or any party to the proceeding, furnish to the department a written statement showing the basis for his valuation of any comparable property in the vicinity of the property under consideration at the hearing. At the meeting the agent shall present to the department a statement setting forth all property which has escaped assessment or which, by reason of erroneous reports or otherwise, has been assessed for less than its correct value; thereupon it shall be the duty of the department immediately to investigate the statement, and in the event that any property owner has been assessed for property at a smaller amount or at a less valuation than should properly have been given, the department shall order the agent to correct such assessment in the manner provided for the correction of assessments by the department of revenue.

History: En. Sec. 3785, Pol. C. 1895; re-en. Sec. 2577, Rev. C. 1907; amd. Sec. 1, Ch. 53, L. 1921; re-en. Sec. 2118, R. C. M. 1921; amd. Sec. 1, Ch. 102, L. 1951; amd. Sec. 41, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3677.

Amendments

The 1973 amendment substituted "hearing of the department" and "agent of the state who assessed the property" for "session of the board" and "assessor and any

deputy" near the beginning of the first sentence; substituted references to the department of revenue for references to the board of equalization; substituted references to the agent of the department of revenue for references to the county assessor or deputy; deleted "and while sitting as a board of equalization" following "the duty of the department immediately" in the middle of the last sentence; and inserted "order the agent to" near the end of the last sentence.

84-608. (2119) State department of revenue to use records in equalizing. The state department of revenue must use the abstract and all other information it may gain from the records of the county clerk or elsewhere, in equalizing the assessment of the property of each county, and may require entry upon the assessment book of any property which has not been assessed; and any assessment made as prescribed in this section has the same force and effect as if made before the delivery of the assessment book to the county clerk.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2580, Rev. C. 1907; re-en. Sec. 2119, R. C. M. 1921; amd. Sec. 42, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3679.

Amendments

The 1973 amendment substituted the reference to the state department of revenue for a reference to the board of county commissioners; deleted references to the assessor; and made minor changes in phraseology.

84-609. (2120) Department may direct assessment in certain instances. The department of revenue may direct its agent to assess any taxable property that has escaped assessment, or to add to the amount, number, or quantity of property, when a false or incomplete list has been rendered, and to make and enter new assessments (at the same time canceling previous entries), when any assessment made by him is deemed by the department so incomplete as to render doubtful the collection of the tax; but the county clerk must notify all persons interested, by letter deposited in the post office, postpaid, and addressed to the person interested, within ten days after the action is taken.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2581, Rev. C. 1907; re-en. Sec. 2120, R. C. M. 1921; amd. Sec. 43, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3681.

Amendments

The 1973 amendment substituted references to the state department of revenue

for references to the board of county commissioners; substituted references to the agent of the state department of revenue for references to the county assessor; inserted "county" before "clerk must notify all persons" near the end of the section; substituted "within ten days after" for "at least ten days before" near the end of the section; and deleted "of the day next when the matter will be investigated" from the end of the section.

84-610. (2121) Department must keep record of proceedings and make oath. The department must record, in a book to be kept for that purpose, all changes, corrections, and orders made by it and must direct its agent to enter upon the assessment book all changes and corrections made by it.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2502, Rev. C. 1907; re-en. Sec. 2121, R. C. M. 1921; amd. Sec. 44, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3682.

Amendments

The 1973 amendment substituted "de-

partment" for "county clerk," deleted "during its session, or as soon as possible after its adjournment" following "and orders made by it and"; inserted "direct its agent to" near the end of the section; and deleted "and on or before the first Monday of August must affix his affidavit thereto, subscribed by him as follows: (form of affidavit deleted)" from the end of the section.

CHAPTER 7—STATE DEPARTMENT OF REVENUE AND TAX APPEAL BOARD

Section

- 84-701. State tax appeal board—appointment of members—term of office.
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- 84-732. Certified copies of corporation license and income tax returns furnished to taxpayer—fee.
- 84-733. Corporation license tax clearance certificates furnished—fee.
- 84-734. Fees to reimburse department for costs—deposit in general fund.

84-701. (2122.1) State tax appeal board—appointment of members—term of office. The members of the state board of equalization shall constitute the first members of the state tax appeal board as provided in this section. On the effective date of this act, there shall be created a state tax appeal board which shall be composed of three members to be appointed by the governor for staggered terms by and with the advice and consent of the senate provided, however, a member so appointed may serve until the next regular session of the legislature without such advice and consent. Each succeeding member shall hold his office for a term of six years, and until his successor shall be appointed and shall have qualified. Any vacancy shall be filled by the governor subject to confirmation by the senate during the next legislative session. Succeeding appointments, except when made to fill a vacancy, shall be made on or before the last day of January during the session of the legislative assembly, next preceding the commencement of the term for which the appointment is made.

History: En. Sec. 1, Ch. 3, L. 1923; amd. Sec. 50, Ch. 100, L. 1973; amd. Sec. 45, Ch. 405, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 100 and once by Ch. 405. Chapter 405 was later in date of approval. Neither amendatory act mentioned or incorporated the changes made by the other. The acts appear not to conflict except possibly with respect to the method of appointment of board members. In this respect, the compiler has used the language of Ch. 405.

Amendments

Chapter 100, Laws of 1973, deleted "created by article XII of the constitution as

amended" after "board of equalization" in the former first sentence; deleted second and third sentences relating to the appointment and terms of office of the first members of the commission; deleted "in accordance with the provisions of the constitution" from the end of the present fourth sentence; and made minor changes in phraseology.

Chapter 405, Laws of 1973, substituted two new sentences for the first three sentences in the parent volume; substituted "by the governor subject to confirmation by the senate during the next legislative session" for "by appointment in accordance with the provisions of the constitution" at the end of the fourth sentence; and deleted "biennial" before "session of the legislative assembly" in the final sentence.

84-702. (2122.2) Qualification and compensation. The persons to be appointed as members of the state tax appeal board shall be such as are known to possess knowledge of the subject of taxation and skill in matters pertaining thereto. No person so appointed shall hold any other office under the laws of this state nor any other state, nor any office under government of the United States, or of any other state. He shall devote his entire time to the duties of the office and shall not hold any position of trust or profit, nor engage in any occupation or business interfering or inconsistent with his duties. The state tax appeal board is transferred to the department of administration for administrative purposes only as is

specified in section 82A-108, R. C. M. 1947. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply. The member designated chairman as provided for in 84-703 shall receive additional compensation of not more than five hundred dollars (\$500) per annum payable in the same manner as the salary. The state tax appeal board shall be paid per diem and travel expenses when away from the capital on official business.

History: En. Sec. 2, Ch. 3, L. 1923; amd. Sec. 1, Ch. 109, L. 1953; amd. Sec. 8, Ch. 225, L. 1963; amd. Sec. 13, Ch. 237, L. 1967; amd. Sec. 46, Ch. 405, L. 1973.

Amendments

The 1967 amendment deleted a sentence setting maximum salary for members at \$10,000; substituted three sentences providing for salaries to be specified in general appropriation acts or to be established by the board of examiners, based on prescribed criteria, if the legislature failed to establish salaries; and made minor style changes.

The 1973 amendment substituted "state tax appeal board" for "board of equalization" in the first sentence; deleted the three sentences inserted by the 1967 amendment and another sentence requiring monthly payment of salaries; inserted new fourth and fifth sentences; substituted "designated chairman" for "elected chairman" at the beginning of the sixth sentence; extended the final sentence to the entire board instead of just the chairman; substituted "per diem and travel expenses" in the final sentence and "actual traveling and other expenses"; substituted "capital" for "capitol" in the final sentence; and made minor changes in phraseology.

84-703. (2122.3) Organization, quorum, sessions. The members of the state tax appeal board shall without delay, meet at the state capital and the governor shall designate one of their members as chairman. A majority of said board shall constitute a quorum. It shall be in continuous session and open for the transaction of business every day except Saturdays, Sundays and legal holidays; and the sessions of said board shall stand and be deemed to be adjourned from day to day without formal entry thereof upon its records. The board may hold sessions or conduct hearings and investigations at other places than the capitol when deemed necessary to facilitate the performance of its duties or to accommodate parties in interest.

History: En. Sec. 3, Ch. 3, L. 1923; amd. Sec. 47, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "the state tax appeal board" for "said board of

equalization first appointed" near the beginning of the first sentence; substituted "the governor shall designate" for "shall organize and elect" near the end of the first sentence; and inserted "Saturdays" in the third sentence.

84-704. (2122.4) Definitions. (1) The term "state board" or "board" when used in this act without other qualification, shall mean the state tax appeal board.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 3, L. 1923; amd. Sec. 48, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "tax appeal board" for "board of equalization" at the end of subsection (1).

84-705. (2122.5) Employees — expenses — minutes — rules. The state tax appeal board may appoint a secretary and employ such other persons as experts, assistants, clerks and stenographers, as may be necessary to perform the duties that may be required of it. The total expenses of such board shall not exceed, in the aggregate, during any fiscal year, the

amount appropriated for the board for all purposes by the legislature for such year. The secretary shall keep full and correct minutes of the transactions and proceedings of said board, shall have authority to administer oaths and perform such other duties as may be required of him. The board may make all needful rules for the orderly and methodical performance of its duties as a tax appeal board and for conducting hearings and other proceedings before it.

History: En. Sec. 5, Ch. 3, L. 1923; amd. Sec. 1, Ch. 82, L. 1947; amd. Sec. 49, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted "subject to the provisions of sections 59-901 and 59-

902" from the beginning of the first sentence; substituted "tax appeal board" for "board of equalization" in the first and last sentences; and deleted a third sentence authorizing the former board to require the assistance of engineers employed by other state agencies.

84-706. (2122.6) Office, furnishings and supplies. The board shall keep its office at the capital, and shall be provided with suitable and necessary offices and office furniture, printing, supplies, stationery, books, periodicals, and financial and commercial reports.

History: En. Sec. 6, Ch. 3, L. 1923; amd. Sec. 50, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "capital" for "capitol."

84-707. (2122.7) Repealed.

Repeal

Section 84-707 (Sec. 7, Ch. 3, L. 1923), relating to continuity between the former state board of equalization and its predecessor, was repealed by Sec. 58, Ch. 100,

Laws 1973. Chapter 405, Laws of 1973 purported to amend this section, but the purported amendment was void under the rule in section 43-515.

84-708. (2122.8) Powers and duties. It shall be the duty of the state tax appeal board:

(1) To prescribe rules and regulations for the tax appeal boards of the different counties in the performance of their duties and for this purpose may schedule meetings of county tax appeal boards, and it shall be the duty of all invited county tax appeal board members to attend if possible and the cost of their attendance shall be paid from the appropriation of the state tax appeal board;

(2) To hear appeals from decisions of the county tax appeal boards;

(3) To hear appeals from decisions of the department of revenue in regard to business licenses, property assessments, taxes, and penalties.

(4) Hearings, witnesses, contempt, fees and subpoenas. Oaths to witnesses in any investigation by the state tax appeal board may be administered by a member of the board or his agent. In case any witness shall fail to obey any summons to appear before said board, or shall refuse to testify, or answer any material questions, or to produce records, books, papers, or documents when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to punish the witness for such neglect or refusal. Any person who shall testify falsely in any material matter, under consideration by the board shall be guilty of perjury and punished accordingly. Witnesses attending shall receive like compensation

as witnesses in the district court. Such compensation shall be charged to the proper appropriation for the board.

(5) The state tax appeal board shall also have the duties of an appeal board relating to such other matters as may be provided by law.

History: En. Sec. 8, Ch. 3, L. 1923; amd. Sec. 1, Ch. 137, L. 1957; amd. Sec. 1, Ch. 227, L. 1963; amd. Sec. 1, Ch. 211, L. 1971; amd. Sec. 52(a), Ch. 405, L. 1973; amd. Sec. 3, Ch. 38, L. 1974.

Effective Date

Section 2 of Ch. 211, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 4, 1971.

Amendments

The 1971 amendment inserted in former subdivision (3) a clause authorizing the former board to apportion the assessed value of telegraph or telephone microwave electronic equipment among the counties; and made minor changes in style.

The 1973 amendment completely rewrote the section.

The 1974 amendment added "and for this purpose may schedule meetings of county tax appeal boards, and it shall be the duty of all invited county tax appeal board members * * * state tax appeal board" at the end of subdivision (1); and made a minor change in phraseology.

Cross-References

Continuation of board's functions, sec. 82A-1803 (1).

County Board Authority

County board of equalization possesses jurisdiction and authority to direct and sanction classification, appraisal and assessment of rural and urban improvements, using "market value" as basis and classifying them according to use or uses other than those to which such land is actually devoted. *Mohland v. State Board of Equalization*, 155 M 49, 466 P 2d 582, certiorari denied, 400 US 940, 91 S Ct 232.

84-708.1. Powers and duties of the state department of revenue. (1)

To annually assess the franchise, roadway, roadbeds, rails, and rolling stock, and all other property of all railroads, and the pole lines and rights of way and all other property of all telegraph and telephone lines, electric power and transmission lines, ditches, canals and flumes, and other similar property, constituting a single and continuous property operated in more than one (1) county in the state, and to apportion such assessments to the counties in which such properties are located on a mileage basis, or in the case of telegraph or telephone microwave electronic equipment, which has no physical connection with the total system, but is an integral part of such system, apportion the valuation for assessment of such company in this state among the several counties of this state in such proportion as will fairly represent the valuation for assessment within each such county, utilizing commonly recognized methods of apportioning as shall be just and equitable, provided, however, that lots and parcels of real estate not included in right of way, with the buildings, structures, and improvements thereon, dams and powerhouses, depots, stations, shops, and other buildings, erected upon right of way, furniture, machinery, and other personal property, shall not be considered as a part of any such single and continuous property, but shall be considered as separate and distinct therefrom, and shall be assessed by the agent of the department of revenue in the county wherein they are situate.

(2) To transmit to the county clerk of each county its apportionment of all assessments made by the department.

(3) To adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any

county and in the several counties and between individual taxpayers; supervise and review the acts of agents of the department; change, increase or decrease valuations made by its agents; and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties between the different classes of property and between individual taxpayers.

(4) To have and exercise general supervision over the administration of the assessment and tax laws of the state, and over its agents and any officers of municipal corporations, having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law, and to supervise the administration of all revenue laws of the state and assist in their enforcement. Further, the state department of revenue is empowered to organize, and it shall be its duty to schedule and hold area schools within the state for appraisers and assessors as often as is deemed necessary in the judgment of the department and the costs of such appraisers and assessors attending shall be borne by the state. Further, the department shall determine if there is a need for a taxing, assessing, and appraising school, and such school shall be held, when deemed necessary. The department shall notify all assessors and appraisers at least six (6) months before such school is scheduled and it shall be the duty of all assessors and appraisers to attend and the cost of their attendance shall be borne by the state.

(5) To confer with, advise and direct officers of municipal corporations as to their duties, with respect to taxation, under the statutes of the state.

(6) To direct proceedings, actions and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities and punishment of public officials and persons, or their agents, for failure or neglect to comply with the provisions of the statutes governing the revenue of the state or municipal corporations; and to cause complaints to be made against assessors and other public officers to the proper district court for their removal from office for official misconduct or neglect of duty.

(7) To require county attorneys to assist in the commencement and prosecution of actions and proceedings for penalties, forfeitures, removals and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws, in their respective counties.

(8) To collect annually from the proper officers of the municipal corporations information as to the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and such other information as may be needful and helpful in the work of the department in such form and upon such blanks as the department shall prescribe; and it shall be the duty of all public officers so called upon to fill out properly and return promptly to the department all blanks so transmitted and in every way aid the department in its work; to examine the records of all municipal corporations for such purposes as are deemed needful or helpful by the department.

(9) In its discretion, to inspect and examine, or cause an inspection and examination of the records of the officers of any municipality, whenever such officer shall have failed, neglected or refused to return properly

the information required by this section within the time set by the department. Upon completion of such inspection and examination the department shall transmit to the clerk, or other proper official of the municipality, a statement of the expenses incurred by the department to secure the necessary information. Within sixty (60) days after the receipt by the municipality of the above statement, the same shall be audited, as other claims of the municipal corporation are audited and shall be paid into the state treasury and if the same is not so paid the attorney general shall institute an action, in the proper court, against the municipality to recover the same.

The officers responsible for the furnishing of the information collected pursuant to this section, shall be jointly and severally liable for any loss the municipality may suffer, through their delinquency; and no payment shall be made to them for salary, or on any other account, until the cost of such inspection and examination as provided above shall have been paid into the treasury, or to the proper officers of such municipality. They shall also be subject to such other fines and penalties as prescribed by law.

(10) To require persons, as defined above, to furnish information concerning their capital, funded or other debt, current assets and liabilities, cost and value of property, earnings, operating and other expenses, taxes and all other facts which may enable the department to ascertain the value of the relative burdens borne by all kinds of property and occupations in the state.

(11) To summon witnesses to appear and give evidence, and to produce records, books, papers and documents relating to any matter which the department shall have authority to investigate and determine.

(12) To cause the deposition of witnesses residing within or without the state, or absent therefrom, to be taken upon notice to the interested party, if any, in like manner that depositions are taken in actions pending in the district court, in any matter which the department shall have authority to investigate and determine.

(13) To examine into all cases where evasion or violation of the laws for taxation of property, proceeds, occupation or business is alleged, complained of or discovered, and to ascertain wherein existing laws are ineffective or are improperly or negligently administered.

(14) To investigate the tax systems of other states and countries and to formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation and improvement in the system of taxation and the economical expenditure of public revenue in the state.

(15) To consult and confer with the governor of the state upon the subject of taxation, the administration of the laws relating thereto and the progress of the work of the department, and to furnish the governor such assistance as he may require.

(16) To transmit to the governor and to each member of the legislature twenty (20) days before the meeting of the legislature, a report of the department, showing all the taxable property of the state and the value of the same in tabulated form, with recommendations for improve-

ments in the system of taxation, together with such measures as may be formulated for the consideration of the legislature; and to include therein a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

History: En 84-708.1 by Sec. 53, Ch. 405, L. 1973.

84-708.2. Central reporting system for identification of corporations.

It shall be the duty of the department of revenue to establish a central reporting system to assist in the identification of corporations, foreign and domestic, which transact business within the state of Montana and/or are subject to taxation by the state of Montana pursuant to the provisions of Title 84.

History: En. Sec. 1, Ch. 469, L. 1973.

Title of Act

An act to establish a central reporting system within the department of revenue to assist in the identification of corporations transacting business within the state of Montana and/or subject to taxation by

the state of Montana; requiring the secretary of state and the department of labor and industry to provide lists relating to corporations; providing for the administration of the act; providing for the lists as a public record; and providing an effective date.

84-708.3. Rules and regulations for central reporting system. The director of the department of revenue shall promulgate rules and regulations to accomplish the purposes of this act.

History: En. Sec. 2, Ch. 469, L. 1973.

84-708.4. List of corporations furnished by secretary of state. The secretary of state shall direct a list of all corporations, foreign and domestic, subject to the terms of Title 15, chapter 22, to the department of revenue. The list shall include the following information:

- (1) the name of the corporation;
- (2) the principal office of the corporation;
- (3) the name and address of the registered agent of the corporation in Montana;
- (4) such other information as the director of the department of revenue may require to administer the purposes of this act.

History: En. Sec. 3, Ch. 469, L. 1973.

84-708.5. Labor department to furnish list of corporations. The commissioner of the department of labor and industry shall direct a list of all corporations, foreign and domestic, subject to the terms of Title 87, chapter 1, to the department of revenue. The list shall include the following information:

- (1) the name of the corporation;
- (2) the principal office of the corporation;
- (3) the name and address of the registered agent of the corporation in Montana;

(4) such other information as the director of the department of revenue may require to administer the purposes of this act.

History: En. Sec. 4, Ch. 469, L. 1973.

84-708.6. List of corporations compiled by revenue department. The department of revenue shall compile a list of all corporations, foreign and domestic, subject to taxation by the state of Montana under the terms of Title 84, to be filed in the central reporting system. Said list shall contain the following information:

- (1) the name of the corporation;
- (2) the principal office of the corporation;
- (3) the name and address of the registered agent of the corporation in Montana;
- (4) whether the corporation filed such reports, returns, and other information pursuant to the terms of Title 84, chapters 15 and 69.

History: En. Sec. 5, Ch. 469, L. 1973.

84-708.7. Cross-referencing of lists by department of revenue. The department of revenue shall maintain the lists referred to in sections 3, 4 and 5 [84-708.4, 84-708.5 and 84-708.6] in such a manner as to cross-reference the information contained in the lists for the purpose of determining whether corporations, foreign and domestic, have complied with the terms of Title 84, chapters 15 and 69, and the same list shall constitute a public record.

History: En. Sec. 6, Ch. 469, L. 1973.

84-708.8. Lists of corporations not open to inspection. The provisions of section 84-1507 shall not apply to the lists provided under the provisions of this act.

History: En. Sec. 7, Ch. 469, L. 1973.

Effective Date

Section 8 of Ch. 469, Laws 1973 read
"This act shall be effective July 1, 1974."

84-709. (2122.9) Appeal to state tax appeal board—hearing. Any person, firm or corporation or the department of revenue in behalf of the state, or any municipal corporation, aggrieved by the action of any county tax appeal board, may appeal to the state board by filing with the county tax appeal board a notice of appeal, and a duplicate thereof with the state board, within ten (10) days after the receipt of the decision of the county board, which notice shall specify the action complained of and the reasons assigned for such complaint. The state board shall set such appeal for hearing either in its office in the capitol or such county seat as the board shall deem advisable to facilitate the performance of its duties or to accommodate parties in interest, and shall give to the appellant and to the county board at least five (5) days' notice of the time and place of such hearing; at the time of giving such notice the state board may require the county board to certify to it the minutes of the proceedings resulting in such action and all testimony taken in connection therewith, and the state board may, in its discretion, determine the appeal on such record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or may hear further testimony. For the

purpose of expediting its work the state board may refer any such appeal to one (1) of its members and the person so designated shall have and exercise all the powers of the board in conducting such hearings, and shall, as soon as possible thereafter, report the proceedings, together with a transcript of the testimony received, to the board and the state board shall determine such appeal on the record so made. On all hearings at county seats throughout the state, the state board or the member designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received, and the cost thereof may be paid out of the general appropriation for the board. In connection with any appeal the state board shall have the authority to affirm, reverse, or modify any decision appealable to the state tax appeal board; the decision of the state tax appeal board shall be final and binding upon all interested parties unless reversed or modified by judicial review. To the extent this section is in conflict with the Montana Administrative Procedure Act, this section shall supersede the Montana Administrative Procedure Act. The state tax appeal board shall not have authority to amend or repeal any administrative rule or regulation. The state tax appeal board must give an administrative rule or regulation full effect unless the board finds any such rule or regulation arbitrary, capricious or otherwise unlawful.

History: En. Sec. 9, Ch. 3, L. 1923; amd. Sec. 1, Ch. 33, L. 1939; amd. Sec. 54, Ch. 405, L. 1973; amd. Sec. 4, Ch. 38, L. 1974; amd. Sec. 1, Ch. 277, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 38 and once by Ch. 277. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization; substituted references to county tax appeal boards for references to county boards of equalization; deleted "to its

secretary, counsel or chief auditor for the conduct of such hearing," following "refer any such appeal to one of its members" in the third sentence; and made a minor change in style.

Chapter 38, Laws of 1974, substituted "after the receipt of the decision" for "after the action" before "of the county board" in the first sentence and made minor changes in style.

Chapter 277, Laws of 1974, inserted "if all parties receive a copy of the transcript and are permitted to submit additional sworn statements" after "appeal on such record" in the second sentence and added the last three sentences.

Effective Date

Section 5 of Ch. 38, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved February 25, 1974.

84-709.1. Judicial review of contested cases. (1) Any party to an appeal before the state tax appeal board who is aggrieved by a final decision in a contested case is entitled to judicial review under this act.

(2) Proceedings for review shall be instituted by filing a petition in district court, and serving a copy thereof on the state tax appeal board, within thirty (30) days after service of the final decision of the state tax appeal board, or if a rehearing is requested within thirty (30) days after the decision thereon. All parties to the appeal shall cause to be served on the state tax appeal board a copy of all pleadings and documents they shall file in such proceeding.

History: En. 84-708.1 by Sec. 52(b), Ch. 405, L. 1973; amd. Sec. 2, Ch. 277, L. 1974.

Compiler's Notes

Sections 52(b) and 53 of Chapter 405, Laws of 1973 both enacted new sections

and assigned the number 84-708.1 to them. The compiler has renumbered this section to avoid confusion and for orderly arrangement.

Amendments

The 1974 amendment inserted "and serving a copy thereof on the state tax appeal board" in the first sentence of subsection (2) and added the second sentence in subsection (2).

84-710. (2122.10) Notice of intention to change assessment. When the state department of revenue shall contemplate making any change in the assessment of any property assessed to any particular person (except in a case where an appeal has been filed with the state tax appeal board), the department shall, before making any change in such assessment, fix a time and place for a hearing thereon, and give to such taxpayer written notice of such hearing by certified letter deposited in the post office postpaid, and directed to said taxpayer at his last known place of residence, at least ten (10) days before the day fixed for such hearing. Such notice shall state the purpose of such hearing and the time and place when the same will be held.

When the state department of revenue shall contemplate raising or lowering the assessed valuation of any one or more classes of property in any county, it shall give notice of its contemplated action to the board of county commissioners of the county in which such class or classes of property is situated, in such manner as it shall deem proper and sufficient, and shall fix a time and place within the county in which such change of assessment is proposed for a hearing thereon; provided, however, that if the change affects one or more classes of property common to more than one county the department shall fix the time and place of hearing so as to accommodate the counties interested. At the time and place fixed for such hearing any taxpayer or any officer of any municipal corporation interested therein may appear and be heard.

History: En. Sec. 10, Ch. 3, L. 1923; amd. Sec. 1, Ch. 89, L. 1959; amd. Sec. 55, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the state board of equalization, except that in the parenthetical phrase within the first sentence, the reference to the state tax appeal board was

substituted for a reference to the state board of equalization.

Judicial Power

District court acted beyond its jurisdiction by enjoining board of equalization from holding hearing, pursuant to this section, concerning revision of grading and valuation of nonirrigated farm land. State ex rel. Lord v. District Court, 154 M 269, 463 P 2d 323.

DECISIONS UNDER FORMER LAW

Hearings and Orders

The state board of equalization is granted the power to hold hearings and issue orders when it contemplates changing

the assessed value of property in a county pursuant to this section. State ex rel. State Board of Equalization v. Price, 157 M 134, 483 P 2d 284.

84-711. (2122.11) Assessment of omitted property — limitation. Whenever the state department of revenue shall, in any year, discover that any taxable property of any person has not been assessed in such year, or that it has been omitted from taxation during any previous year or years, the department may assess the same for such year or for such previous years. The order making the assessment shall contain the name of the person to whom the property is assessed, a general description of such property,

its assessed valuation, the year for which it is assessed and the county in which the same is assessed. A copy of such order shall be transmitted to the officer of the county, in whose possession the assessment books of such county are at the time of the making of such order by the department, and such officer shall immediately after receiving such copy, enter the assessment on the tax books of the county for the year in which such order is made, and thereupon such assessment shall have the same force and effect as though originally made by its agent; provided, however, that before making any such assessment the state department of revenue shall give the person to whom such property is proposed to be assessed, notice of its intention to make such assessment, and the time and place when a hearing will be had thereon; such notice to be given either by registered letter or personal service at least ten days before the date so fixed for such hearing; and provided further that all assessments of omitted property must be made within three years after the end of the calendar year in which the same should have been assessed.

History: En. Sec. 11, Ch. 3, L. 1923; amd. Sec. 56, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted refer-

ences to the state department of revenue for references to the state board of equalization; and substituted references to the agent of the department of revenue for references to the county assessor.

84-712. (2122.12) Statement of changes to be sent to county clerk.

The department of revenue shall transmit to each county clerk a statement of the changes made by the department in the assessment book of the county, or any assessment contained therein, which shall be prima facie evidence of the regularity of all proceedings of the department resulting in the action which is the subject matter of the statement.

History: En. Sec. 12, Ch. 3, L. 1923; amd. Sec. 57, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment of revenue" for "secretary of the board" near the beginning; and substituted references to the department for references to the board.

84-713. (2122.13) Determination of state rate of taxation—notice of.

Between the first and third Mondays of August of each year, the governor must determine the rate of state tax to be levied and collected upon the assessed valuation of the property in the state, which, after allowing twelve per cent (12%) for delinquencies in the collection of taxes, must be sufficient to raise the specific amount of the revenue required by the legislative assembly for state purposes. The state department of revenue must immediately thereafter transmit to the county clerk of each county a statement of such rate, and upon its receipt the county clerk must, in writing, notify the state department of revenue thereof.

History: En. Sec. 13, Ch. 3, L. 1923; amd. Sec. 1, Ch. 19, L. 1969; amd. Sec. 7, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted "governor must determine" for "board must determine" before "the rate of state tax" in the first sentence; and substituted "The state board of equalization" for "The

board" at the beginning of the last sentence.

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places in the second sentence.

Temporary Provision

The legislature levied a tax of 2 mills for 1973 and 1974.

84-714. (2122.14) Penalty for refusal to furnish information. If any person shall refuse inspection of any books or records when requested by the department or its authorized agent, or shall refuse or neglect to furnish any information called for by the department in the performance of its official duties relating to the assessment and taxation of property the department shall make such determination and assessment of his or its property as in its judgment appears to be just and equitable, and may add to its assessment thus made not more than twenty per cent thereof as a penalty for such refusal or neglect. The department shall immediately notify the person so assessed of its action, either by registered mail or by personal service of such notice. Such action of the department and the assessment so made shall be final and conclusive unless the party so assessed, (1) shall, within twenty days after receiving such notice file an appeal with the state tax appeal board and show cause before the board why such assessment and penalty should be modified or annulled, when the board shall then from all information presented to it or from its own investigation make such assessment as to it seems just and equitable; or, (2) unless the party assessed shall within sixty (60) days after receiving such notice, appeal to the district court of Lewis and Clark county from the action of the department in making such assessment and imposing such penalty by serving on the department and filing in the office of the clerk of said district court notice of appeal therefrom together with a bond conditioned for the payment of such amount as the judgment of said court may require within thirty (30) days after the entry of such judgment. Upon the hearing of such appeal the court or the state tax appeal board shall determine whether the department of revenue was entitled to inspect such books or records, or was entitled to the information requested by the department, and if the court or board shall find that the department was entitled to inspect such books or records or was entitled to the information requested by the department, the court or board shall not change or modify in any manner the assessment as made or the penalty added to such assessment by the department but if the court or board shall find that the department was not entitled to inspect such books or records, or was not entitled to the information requested by the department, then the court or board shall enter a judgment changing and modifying the assessment made by the department by striking out the penalty added thereto by the department.

History: En. Sec. 14, Ch. 3, L. 1923; amd. Sec. 58, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equaliza-

tion; substituted "file an appeal with the state tax appeal board" for "furnish all information requested by the board" in clause (1) of the second sentence; and inserted references to the state tax appeal board following references to the court in the last sentence.

84-715. (2122.15) Duties of public officers. It shall be the duty of all public officers of the state and of any municipality to give to the department information in their possession relating to taxation when required by the department, and to co-operate with and aid the department in every manner in its efforts to secure a fair, equitable and just enforcement of the taxation and revenue laws of the state.

History: En. Sec. 15, Ch. 3, L. 1923; **Amendments**
amd. Sec. 8, Ch. 516, L. 1973.

The 1973 amendment substituted "department" for "board" in three places.

84-716. (2122.16) Hearings, witnesses, contempt, fees and subpoenas. Oaths to witnesses in any investigation by the department may be administered by the director of revenue or his agent. In case any witness shall fail to obey any summons to appear before the department, or shall refuse to testify, or answer any material question, or to produce records, books, papers or documents when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to compel obedience to any summons or order of the board, or to punish the witness for such neglect or refusal. Any person who shall testify falsely in any material matter, under consideration by the department shall be guilty of perjury and punished accordingly. Witnesses attending shall receive like compensation as witnesses in the district court. Such compensation shall be charged to the proper appropriation for the department.

History: En. Sec. 16, Ch. 3, L. 1923;
amd. Sec. 59, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for

references to the state board of equalization; and substituted "director of revenue or his agent" for "secretary or a member of the board" at the end of the first sentence.

84-717. (2122.17) Seal. The state tax appeal board shall have a seal and such seal shall have the following words engraved thereon. "Tax Appeal Board of the State of Montana." The board shall authenticate all of its orders, records and proceedings with such seal, and the courts of this state shall take judicial notice of such seal.

History: En. Sec. 17, Ch. 3, L. 1923; **Amendments**
amd. Sec. 60, Ch. 405, L. 1973.

The 1973 amendment substituted "tax appeal board" for "board of equalization" in two places.

84-719. (2122.19) Assessment and apportionment by department of revenue—when made. The state department of revenue must, on or before the third Monday in July of each year, assess the net proceeds of all mines and all property required by law to be assessed by the department, and must apportion to the counties and to the cities, towns, school districts and other taxing districts therein, in the manner provided by law, the total assessment of each of the properties so assessed by the department.

History: En. Sec. 1, Ch. 180, L. 1925;
amd. Sec. 9, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted refer-

ences to the department of revenue for references to the state board of equalization in three places.

84-720. (2122.20) Transmission of assessment and apportionment to county clerk. The state department of revenue must, on or before the fourth Monday in July of each year, transmit to the county clerk of each county to which any such apportionment is made, a statement with reference to each property so assessed and apportioned, containing a description

thereof sufficient for identification, and stating the kind and character and the amount, quantity and extent of such property and the value thereof in each city, town, school district and other taxing district within the county, and the total value thereof in the county, and the department must, at the time of transmitting such statement to the county clerk, transmit a copy thereof to the owner of such property or to the person to whom the same is to be assessed.

History: En. Sec. 2, Ch. 180, L. 1925;
amd. Sec. 10, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted refer-

ences to the department of revenue for references to the state board of equalization near the beginning and near the end of the section.

84-721. (2122.21) Entering of state department of revenue's assessment in assessment book. The county clerk must, on the receipt of each such statement from the state department of revenue, immediately enter on the assessment books of the county the assessment of such property as contained in such statement, and the same shall constitute the assessment of such property for taxation purposes in such county and in such cities, towns, school districts and other taxing districts of such county; provided that if any city or town in such county shall have provided by ordinance for the collection of its taxes by its own officers the county clerk must immediately after entering such assessment on the assessment books of the county, transmit a copy of so much of such statement as affects such city or town to the clerk thereof, and such city or town clerk shall on receipt thereof enter such assessment on the assessment books of such city or town. All such property is taxable upon such assessment at the same rate, by the same officers, and for the same purposes as other taxable property within such counties, cities, towns, school and other taxing districts, respectively, and such taxes must be collected in the same manner and by the same officers as other taxes are collected.

History: En. Sec. 3, Ch. 180, L. 1925;
amd. Sec. 11, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-722. (2122.22) Change of assessment—application—hearing—reassessment. At any time after the assessment of any property by the state department of revenue, and before the fourth Monday in August of the year in which such assessment is made, the owner of such property, or the person to whom the same is assessed, may make written application to the state department of revenue to have such assessment changed or corrected in any respect or particular, or to have the assessment set aside and a reassessment made by the department, which application must set forth specifically the grounds and reasons on which such application is based. On receipt of any such application the department must make an order fixing a day for hearing the same, giving the applicant at least ten days notice in writing of the day so fixed for such hearing. And the state department of revenue may, on its own initiative, when it believes that an error or mistake has been made in an assessment made by it, or that it is for the best interests of the state so to do, at any time before the fourth Monday in

August of the year in which such assessment is made, make an order for a hearing thereon, giving the owner of or person to whom such property is assessed, at least ten days' written notice of the day so fixed for such hearing, in which said notice and order must be stated briefly, the mistake or error believed to exist by the department and the manner in which it is proposed to correct the same, or wherein the interests of the state require a change to be made in such assessment and the nature of the change proposed therein. On any such hearing, whether held on application of the owner or person to whom the property is assessed or on the initiative of the state department of revenue, such department, after hearing and considering all evidence introduced on such hearing, may make such changes or corrections in such assessment as it may deem necessary and proper, or may set aside such assessment and make a reassessment of such property; provided that all such hearings must be held and all such changes, corrections or reassessments made by the state department of revenue before the second Monday in October. When any change or correction is made in any assessment, or any reassessment is made as the result of such hearing the department of revenue must, within fifteen days thereafter, transmit to the county clerk of each county to which such property has been apportioned, or which is affected by such changes, corrections or reassessments, a statement (which) shall be in the same form and contain the same details as the statement required by section 84-720. On receipt of any such statement the county clerk must immediately make the necessary and proper changes in the assessment of such property on the assessment books of the county as shown by such statement, and if any change or correction in such assessment or such reassessment affects any city or town which collects its taxes by its own officer, the county clerk must, after entering the same on the assessment books of the county, transmit to such city or town clerk so much of such statement as affects such city or town and such city or town clerk must thereupon make such changes and corrections on the assessment books of such city or town.

History: En. Sec. 4, Ch. 180, L. 1925;
amd. Sec. 12, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization throughout the section.

84-723. (2122.23) Collection of nonresident inheritance taxes, gross earnings on freight lines, license taxes by state department of revenue. The duty of collecting the nonresident inheritance taxes, all gross earning taxes on freight lines, and the following license taxes, to wit: The corporation license tax, taxes on express companies and sleeping car companies, coal mines, and dealers license taxes, metalliferous mines license tax, cement producers and dealers license taxes, the gasoline distributors and dealers license tax, the oil producer's license tax and all other license taxes determined by the state department of revenue, the responsibility for collection of which has heretofore been imposed upon the state treasurer are hereby transferred from the state treasurer to the state department of revenue; such collections to be turned over to the state treasurer on the 10th and 25th day of each and every month, and it is further provided that all duties

heretofore imposed by law upon the state treasurer, with reference to the collection and issuance of receipts for any of the above named license taxes, or other taxes above enumerated, are hereby imposed upon the state department of revenue.

History: En. Sec. 1, Ch. 79, L. 1927; amd. Sec. 13, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment of revenue" for "board of equalization" in three places; and made a minor change in phraseology.

84-724. Destruction of tax records authorized—procedure. Notwithstanding the provisions of any other chapter of this code, the state department of revenue is authorized to destroy tax records more than three (3) years old, as shall be determined to be of no further value.

Authorization for destruction of tax records shall be by the director of revenue or authorized employees of the department of revenue. A copy of the authorization and authenticated list shall be maintained by the department of revenue.

History: En. Sec. 1, Ch. 187, L. 1963; amd. Sec. 1, Ch. 9, L. 1969; amd. Sec. 61, Ch. 405, L. 1973.

Amendments

The 1969 amendment substituted "three (3) years old" for "five (5) years old" after "tax record more than" in the first paragraph.

The 1973 amendment substituted "department of revenue" for "board of equalization" in the first paragraph; substituted "the director of revenue or authorized employees of the department of revenue" for "unanimous vote of the members of the

state board of equalization entered upon on authenticated list of records authorized to be destroyed" at the end of the first sentence in the second paragraph; and substituted "maintained by the department of revenue" for "entered in the minutes of the board by its secretary" at the end of the second sentence in the second paragraph.

Effective Date

Section 2 of Ch. 9, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

84-725. Suspense account for receipts and refunds. The state department of revenue shall establish a suspense account in the state treasury for the purpose of conveniently processing receipts and for paying refunds for overpayments of inheritance taxes collected by county treasurers and all other taxes collected by the department. All moneys received by the department shall be temporarily credited by the state treasurer to the department's suspense account. Each month the department shall send to the treasurer and to the controller a distribution sheet designating the amount to be deposited in each treasury fund and in each account.

History: En. Sec. 1, Ch. 126, L. 1963; amd. Sec. 14, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted refer-

ences to the department of revenue for references to the state board of equalization throughout the section.

84-726. Refund of overpayments—time of filing claims for refund—procedure. (1) When there has been an overpayment of the inheritance tax collected by county treasurers or any other tax collected by the state department of revenue, and there is no law providing for a refund, the department shall refund the amount of the overpayment to the taxpayer, plus any interest and penalty due the taxpayer, as provided in subsection (2) of this section.

(2) No refund or payment shall be allowed unless a claim is filed by the taxpayer before the expiration of five (5) years from the time the tax was paid. Within six (6) months after the claim is filed the state department of revenue shall examine the claim and either approve or disapprove it. If the claim is approved the credit or refund shall be made to the taxpayer within sixty (60) days after the claim is approved; if the claim is disallowed, the state department of revenue shall so notify the taxpayer and shall grant a hearing on the claim. If the department disapproves a claim after holding a hearing, the determination of the department may be reviewed as provided by section 84-4923.1.

History: En. Sec. 2, Ch. 126, L. 1963; amd. Sec. 15, Ch. 516, L. 1973.

ences to the department of revenue for references to the state board of equalization throughout the section.

Amendments

The 1973 amendment substituted refer-

84-727. Assessment of proportionally registered interstate motor vehicle fleets—full or partial year—tax payment required for registration. The state department of revenue shall assess, for the purpose of personal property taxes, interstate motor vehicle fleets proportionally registered under the provisions of sections 53-701 to 53-724, and said assessment shall be apportioned on the ratio of total miles traveled to in-state miles traveled formula as prescribed by section 53-712. Interstate motor vehicle fleets are hereby declared assessable for taxation purposes upon application for proportional registration and shall be assessed to the persons who own or claim, or in whose possession or control the fleet is at the time of the application. Any fleet contained in an original application which has a situs for purpose of property taxation in Montana by the terms of this act or any other provision of the laws of Montana between January 1st and April 1st shall be taxed for a full year. Any fleet contained in an original application which acquires a situs for the purpose of property taxation in Montana under the provisions of this act or any other law of the state of Montana after April 1st shall have taxes apportioned as provided in section 84-6011. Any fleet, contained in a renewal application, shall be assessed and taxed for a full year. Vehicles contained in a fleet for which current taxes have been assessed and paid shall not be assessed under this section upon presentation to the department of revenue of proof of payment of tax for the current registration year. The payment of personal property taxes are a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet.

History: En. Sec. 1, Ch. 89, L. 1965; amd. Sec. 16, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the first and sixth sentences.

84-728. Valuation of interstate fleets—determination of aggregate tax due. The state department of revenue shall assess any interstate motor vehicle fleet making application for proportional registration as follows:

(a) The purchase price depreciated by a schedule as prescribed by the department shall determine the depreciated value.

(b) to (d). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 89, L. 1965; amd. Sec. 17, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted refer-

ences to the department of revenue for references to the state board of equalization in the preliminary clause and in subdivision (a).

84-729. Determination of average levy in state—application to interstate fleets—cost stated in application for registration. The state department of revenue shall determine the aggregate tax in the entire state for: (1) state, (2) county, (3) local purposes, levied on the general property of the state in the previous year excluding special levies on property for local improvements and special state levies on livestock for bounties, inspection and protection purposes.

From the total taxable valuation of the general property of the state including net proceeds and the aggregate tax as determined, the state department of revenue shall compute the average levy by dividing the aggregate tax by the total state taxable valuation. The rate so determined shall constitute the rate of taxation on the taxable value of all interstate trucks.

The original cost of each vehicle shall be included on the application for proportional registration under the provisions of sections 53-701 to 53-724. The department shall determine the original cost when the owner does not have this information on new or used vehicles, or in the case of rebuilt vehicles.

History: En. Sec. 3, Ch. 89, L. 1965; amd. Sec. 18, Ch. 516, L. 1973.

ences to the department of revenue for references to the state board of equalization in each of the three paragraphs.

Amendments

The 1973 amendment substituted refer-

84-730. Situs in state of proportionally registered fleets—collection of property tax. For the purposes of this section, all vehicles previously registered or which registration has been applied for, under the provisions of sections 53-701 to 53-724, are hereby declared to have a situs in the state for the purposes of taxation.

The department or its designated agent shall collect the personal property taxes prescribed herein.

History: En. Sec. 4, Ch. 89, L. 1965; amd. Sec. 19, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in the second paragraph.

84-732. Certified copies of corporation license and income tax returns furnished to taxpayer—fee. Certified copies of returns filed for corporation license tax under section 84-1504, and certified copies of returns filed for income tax under section 84-4919, may be furnished by the department of revenue to the taxpayer or his duly authorized representative upon payment of fifty cents (50¢) for each page.

History: En. Sec. 1, Ch. 187, L. 1965; amd. Sec. 20, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-733. Corporation license tax clearance certificates furnished—fee.

Upon request of a corporation and upon the payment of one dollar (\$1) the department of revenue may furnish to it a certificate to the effect that all taxes have been paid, that a return has been filed and that all information has been supplied as required by the provisions of the Corporation License Tax Act.

History: En. Sec. 2, Ch. 187, L. 1965; **Amendments**
amd. Sec. 21, Ch. 516, L. 1973.

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-734. Fees to reimburse department for costs—deposit in general fund. All moneys collected under this act shall be required to reimburse the state department of revenue for costs involved in the preparation of the copies and certificates. All such moneys collected shall go into the general fund of the state of Montana.

History: En. Sec. 3, Ch. 187, L. 1965; **Amendments**
amd. Sec. 22, Ch. 516, L. 1973.

The 1973 amendment substituted "department of revenue" for "board of equalization."

CHAPTER 8—RAILROADS OPERATING IN MORE THAN ONE COUNTY—ASSESSMENT FRANCHISE, ETC. BY STATE DEPARTMENT OF REVENUE

Section

- 84-801. Assessment of railroads.
- 84-802. Assessment, how made.
- 84-802.1. Hearing before the state tax appeal board.
- 84-803. Duties of the state department of revenue respecting statement.
- 84-804. Record of assessment and apportionment of railroads.

84-801. (2131) Assessment of railroads. The president, secretary, or managing agent, or such other officer as the state department of revenue may designate, of any corporation, and each person or association of persons, owning or operating any railroad in more than one county in this state, must, on or before the first day of April of each year, furnish the department a statement, signed and sworn to by one of such officers, or by the person or one of the persons forming such association, showing in detail for the year ending on the thirty-first day of December, immediately preceding:

(1) to (10). * * * [Same as parent volume.]

(11). A description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road shall have once been given, no other annual description thereof is necessary, unless the road shall have been changed. Whenever the road, or any portion of the road, is advertised to be sold, or is sold for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the person, corporation, or association giving the description. No assessment is invalid on account of a misdescription of the railroad, or the right of way for the same. If such statement is not furnished as above provided, the assessment made by the state department of revenue upon

the property of the corporation, person, or association failing to furnish the statement is conclusive and final.

(12). * * * [Same as parent volume.]

(13). Any other facts the state department of revenue may require.

History: Ap. p. Sec. 1675, 5th Div. Comp. Stat. 1887; amd. Sec. 43, p. 87, L. 1891; re-en. Sec. 3737, Pol. C. 1895; re-en. Sec. 2556, Rev. C. 1907; re-en. Sec. 2131, R. C. M. 1921; amd. Sec. 1, Ch. 7, L. 1925; amd. Sec. 23, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3664

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in the preliminary clause and subdivisions (11) and (13); and made a minor change in style.

84-802. (2132) Assessment, how made. The state department of revenue must assess the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county. All rolling stock must be assessed in the name of the person, corporation, or association owning, leasing, or using the same. Assessment must be made to the corporation, person, or association of persons owning or leasing or using the same, and must be made upon the entire railroad within the state. The depots, stations, shops and buildings erected upon the space covered by the right of way, and all other property owned or leased by such person, corporation, or association, except as above provided, shall be assessed by an agent of the state department of revenue in the county wherein they are situate. After making such assessment, the department shall give written notice thereof to such owner or operator. Within ten (10) days the owner or operator, or any taxpayer, may appear at the department of revenue in person, or otherwise, to show cause why such assessment should be either lowered or raised. On or before the second Monday in July, the department shall apportion such assessment to the counties, school districts, cities, towns, and other tax subdivisions, in which such railroad is located.

History: Ap. p. Sec. 1675, 5th Div. Comp. Stat. 1887; amd. Sec. 44, p. 89, L. 1891; re-en. Sec. 3738, Pol. C. 1895; re-en. Sec. 2557, Rev. C. 1907; re-en. Sec. 2132, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1939; amd. Sec. 62(a), Ch. 405, L. 1973. Cal. Pol. C. Sec. 3665.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the state department of equalization; deleted "but franchises derived from the United States must not be

assessed" from the end of the first sentence; substituted "an agent of the state department of revenue in" for "the assessor of" near the end of the fourth sentence; deleted "at least ten (10) days" before "written notice" in the fifth sentence; deleted "designating therein a time and place for hearing thereon, at which time and place" from the end of the present fifth sentence; divided the former fifth sentence into the fifth and sixth sentences; and inserted "Within ten (10) days" at the beginning of the sixth sentence.

84-802.1. Hearing before the state tax appeal board. Following the assessment by the department, any aggrieved party may appeal to the state tax appeal board according to the rules and regulations of said board.

History: En. 84-802.1 by Sec. 62(b), Ch. 405, L. 1973.

84-803. (2133) Duties of the state department of revenue respecting statement. The state department of revenue must, within the time mentioned, in the preceding section, transmit by mail to the agent of the de-

partment in each county, to which such apportionment is made, a statement in detail sufficient for identification and location of the property, showing the assessed value per mile of the same, as fixed by a prorata distribution per mile of the assessed value of the whole franchise, roadway, roadbed, rails, and rolling stock of such railroad, within the state, and the amount apportioned to the county and to each taxing subdivision thereof. The agent of the department of revenue in each county must enter the statement on the assessment roll of the county.

History: En. Sec. 45, p. 90, L. 1891; re-en. Sec. 3739, Pol. C. 1895; re-en. Sec. 2558, Rev. C. 1907; re-en. Sec. 2133, R. C. M. 1921; amd. Sec. 2, Ch. 13, L. 1939; amd. Sec. 63, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3665.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the state board of equalization; and substituted references to the agent of the department of revenue for references to the county assessor.

84-804. (2136) Record of assessment and apportionment of railroads. The state department of revenue must keep a record of all such assessments and apportionments.

History: En. Sec. 48, p. 92, L. 1891; re-en. Sec. 3742, Pol. C. 1895; re-en. Sec. 2561, Rev. C. 1907; re-en. Sec. 2136, R. C. M. 1921; amd. Sec. 3, Ch. 13, L. 1939; amd. Sec. 24, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3666.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

CHAPTER 9—TELEGRAPH, TELEPHONE, ELECTRIC POWER AND OTHER LINES—ASSESSMENT BY STATE DEPARTMENT OF REVENUE

Section

- 84-901. Officers of certain telegraph, telephone, electric power and other lines to furnish statement to state department of revenue.
- 84-902. Statement to be transmitted by agent of the department of revenue to the state department of revenue.
- 84-903. Appearance at department of revenue.
- 84-903.1. Hearing before the state tax appeal board.
- 84-904. Hearing for the determination of facts pertaining to assessment.
- 84-905. Assessment of property—apportionment to counties.
- 84-906. Transmission of statement of amount apportioned to counties.
- 84-907. Record of assessment and apportionment of properties.

84-901. (2138) Officers of certain telegraph, telephone, electric power and other lines to furnish statement to state department of revenue. The president, secretary, or managing agent, or such other officer as the state department of revenue may designate, of any corporation, and each person or association of persons owning or operating a telegraph, telephone, microwave, electric power or transmission line, natural gas pipeline, oil pipeline, canal, ditch, flume, or other property, other than real estate not included in right of way, and which constitute a single and continuous property throughout more than one county, must, on or before the first Monday of March in each year, furnish the state department of revenue a statement, signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending on the thirty-first day of December, immediately preceding, as follows:

1 to 3. * * * [Same as parent volume.]

4. Such other information regarding such property as may be required by the state department of revenue.

History: En. Sec. 1, Ch. 49, L. 1919; re-en. Sec. 2138, R. C. M. 1921; amd. Sec. 1, Ch. 17, L. 1939; amd. Sec. 25, Ch. 516, L. 1973; amd. Sec. 1, Ch. 50, L. 1974.

The 1974 amendment inserted "micro-wave" after "telephone" near the beginning of the section.

Effective Date

Section 2 of Ch. 50, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved February 27, 1974.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the preliminary clause and in subdivision 4.

84-902. (2139) Statement to be transmitted by agent of the department of revenue to the state department of revenue. The agent of the department in every county must, on the first Monday in May of each year, transmit to the state department of revenue a statement showing:

1. The name and address of each corporation, person and association owning or operating any telegraph, telephone, electric power or transmission line, natural gas pipeline, oil pipeline, canal, ditch, flume, or other similar property in more than one county of the state, whose property, or any part thereof, has been assessed by the agent of the department.

2. * * * [Same as parent volume.]

3. After making such assessment, the department shall give written notice thereof to the person or persons to whom the assessment is made.

History: En. Sec. 2, Ch. 49, L. 1919; re-en. Sec. 2139, R. C. M. 1921; amd. Sec. 2, Ch. 17, L. 1939; amd. Sec. 64, Ch. 405, L. 1973.

ences to the agent of the department of revenue for references to the county assessor; substituted references to the state department of revenue for references to the state board of equalization; and added subdivision 3.

Amendments

The 1973 amendment substituted refer-

84-903. (2141) Appearance at department of revenue. After making such assessment, the department shall give written notice thereof to the person or persons to whom the assessment is made. Within ten (10) days the person or persons, or any taxpayer may appear at the department of revenue in person, or otherwise, to show cause why such assessment should be either lowered or raised.

History: En. Sec. 4, Ch. 49, L. 1919; re-en. Sec. 2141, R. C. M. 1921; amd. Sec. 5, Ch. 17, L. 1939; amd. Sec. 65(a), Ch. 405, L. 1973.

ences to the state board of equalization; deleted "at least ten (10) days" before "written notice" in the first sentence; deleted "designating a time and place for hearing thereon, at which time and place" from the end of the first sentence; and inserted "Within ten (10) days" at the beginning of the second sentence.

Amendments

The 1973 amendment divided the section into two sentences; substituted references to the department of revenue for refer-

84-903.1. Hearing before the state tax appeal board. Following the assessment by the department, any aggrieved party may appeal to the state tax appeal board according to the rules and regulations of said board.

History: En. 84-903.1 by Sec. 65(b), Ch. 405, L. 1973.

84-904. (2142) Hearing for the determination of facts pertaining to assessment. If any corporation, person or association shall fail, neglect, or refuse to furnish the state department of revenue with a full, true, and correct statement as required, and within the time, by section 84-901, or if the department shall have reason to believe that any such statement furnished the department is incorrect or erroneous in any particular, the department shall order a hearing for the purpose of ascertaining and determining such facts as will enable the department to assess the property of such corporation, person or association in accordance with the provisions of section 84-905. At least ten days' written notice of such hearing shall be given to such corporation, person, or association, and on such hearing the department shall ascertain and determine each and all of the matters and facts which should have been stated in such statement.

History: En. Sec. 5, Ch. 49, L. 1919; re-en. Sec. 2142, R. C. M. 1921; amd. Sec. 3, Ch. 17, L. 1939; amd. Sec. 26, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the board of equalization.

84-905. (2143) Assessment of property—apportionment to counties. The department must assess all the properties described in section 84-901, but franchises granted by the United States must not be assessed, the value of such properties for assessment purposes to be determined upon such factors as the department shall deem proper.

On or before the second Monday in July, the department shall apporportion such assessment to the counties in which the properties are situated.

History: En. Sec. 6, Ch. 49, L. 1919; re-en. Sec. 2143, R. C. M. 1921; amd. Sec. 4, Ch. 17, L. 1939; amd. Sec. 27, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in three places.

84-906. (2144) Transmission of statement of amount apportioned to counties. The state department of revenue, must, not later than the second Monday of July, transmit or mail to the agent of the department in each county to which such apportionment has been made, a statement showing the length of the property in such county; a description of the same sufficient for identification; the assessed value of the same as determined by the department; and the amount apportioned to the county. The agent of the department must enter the statement on the assessment roll or book of the county, and enter the amount of the assessment apportioned to the county in the column of the assessment roll or book which shows the total value of all property for taxation in the county.

History: En. Sec. 7, Ch. 49, L. 1919; re-en. Sec. 2144, R. C. M. 1921; amd. Sec. 6, Ch. 17, L. 1939; amd. Sec. 66, Ch. 405, L. 1973.

ences to the state department of revenue for references to the state board of equalization; and substituted references to the agent of the department of revenue for references to the county assessor.

Amendments

The 1973 amendment substituted refer-

84-907. (2146) Record of assessment and apportionment of properties. The state department of revenue must keep a record of all such assessments and apportionments.

History: En. Sec. 9, Ch. 49, L. 1919;
re-en. Sec. 2146, R. C. M. 1921; amd. Sec.
7, Ch. 17, L. 1939; amd. Sec. 28, Ch. 516,
L. 1973.

Amendments

The 1973 amendment substituted "de-
partment of revenue" for "board of equal-
ization."

CHAPTER 10—LICENSE TAXES—CARBON BLACK PRODUCERS

(Repealed—Section 1, Chapter 370, Laws of 1973)

84-1001 to 84-1010. (2380.1 to 2380.10) Repealed.

Repeal

Sections 84-1001 to 84-1010 (Secs. 1 to
10, Ch. 97, L. 1929), relating to a tax on
production of carbon black, were repealed
by Sec. 1, Ch. 370, Laws of 1973. Chapter

516, Laws of 1973, purported to amend
secs. 84-1004 to 84-1006 and 84-1008. How-
ever, the amendments were void under the
rule of sec. 43-515.

CHAPTER 11—LICENSE TAXES—CEMENT DEALERS

Section

- 84-1103. Statement to be filed with state department of revenue.
- 84-1105. Record of cement received.
- 84-1106. Quarterly statement of produce sold on which no tax paid—payment of tax.
- 84-1108. Procedure to ascertain tax on failure of statement—penalty.

84-1102. (2368) License tax on sales of cement, etc.

Cross-References

Multistate tax compact, sec. 84-6701.

84-1103. (2369) Statement to be filed with state department of revenue. Each and every person engaged in or carrying on such occupation or business in the state of Montana at the date when this act becomes effective must, not later than the thirtieth day of April, 1921, and every person who shall engage in or carry on such occupation or business after the date when this act becomes effective must immediately after engaging in such occupation or business, make out and file with the state department of revenue a certificate and statement, on forms prescribed by the state department of revenue, which shall contain the name under which such person is engaging in and carrying on such occupation and business in this state, giving the location of each place of business of such person, the name and address of the managing agent in this state, if any association, joint-stock company, syndicate or corporation, or if a firm or copartnership the names and addresses of the persons composing the same; if an association, joint-stock company, syndicate or corporation, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers, and such other information as the state department of revenue may require.

History: En. Sec. 3, Ch. 16, Ex. L. 1921;
re-en. Sec. 2369, R. C. M. 1921; amd. Sec.
33, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "de-
partment of revenue" for "board of equal-
ization."

84-1105. (2371) Record of cement received. Each and every person engaging in or carrying on such occupation in this state shall keep a record showing all cement, cement plaster, gypsum plaster and other byproducts

of cement purchased or received by or delivered to such person for sale by such persons at retail in this state for the manufacturing or production of which cement, cement plaster, gypsum plaster or other byproducts of cement, no person has paid, or assumed liability for the payment of any license tax to the state of Montana under any law of this state, which record shall show the date of each purchase or delivery, the number of barrels or tons contained therein, and the name of the person from whom the same was purchased or received, which records shall at all times during the business hours of the day be subject to inspection by the state department of revenue, its members, agents or employees.

History: En. Sec. 5, Ch. 16, Ex. L. 1921;
re-en. Sec. 2371, R. C. M. 1921; amd. Sec.
34, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

84-1106. (2372) Quarterly statement of produce sold on which no tax paid—payment of tax. Each and every person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of the following quarter, make out in duplicate, on forms prescribed by the state department of revenue, and deliver to the state treasurer, a statement showing the total number of barrels or tons of such commodities sold by such persons during such quarter for the manufacturing or production of which no person has paid, or assumed liability for the payment of, any license tax to the state of Montana under any laws of this state, together with the total amount due to the state of Montana as license taxes from such person for such quarter; and must within thirty days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana for the quarter for which said statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, joint-stock company, syndicate or corporation making the same. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state department of revenue.

History: En. Sec. 6, Ch. 16, Ex. L. 1921;
re-en. Sec. 2372, R. C. M. 1921; amd. Sec.
35, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment of revenue" for "board of equalization" near the beginning of the first sentence and at the end of the last sentence.

84-1108. (2374) Procedure to ascertain tax on failure of statement—penalty. If any person shall fail, neglect or refuse to make or file the statement required by section 84-1106 within the time required, the state department of revenue shall immediately after such time has expired, proceed to inform itself, as best it may, regarding the matters required to be set forth in such statement, and shall fix and determine the amount of the license taxes due from such person for such quarter, and shall make out a statement in duplicate showing such matters, and the amount of such license taxes and shall add to the amount of such license taxes twenty-

five per cent thereof as a penalty, and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto, and interest on the whole thereof at the rate of twelve per cent per annum, from the date of the making of such statement by the state department of revenue until paid. Upon request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

History: En. Sec. 8, Ch. 16, Ex. L. 1921;
re-en. Sec. 2374, R. C. M. 1921; amd. Sec.
36, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning and end of the first sentence.

CHAPTER 12—LICENSE TAXES—CEMENT AND GYPSUM PRODUCERS

Section

- 84-1202. License tax on producers and importers of gypsum and cement.
- 84-1204. Quarterly payment of tax.
- 84-1205. Statements to be filed with department of revenue.
- 84-1206. Manufacturers to keep records.
- 84-1207. Quarterly statement and payment of tax.
- 84-1209. Procedure to ascertain tax on failure of statement—penalty.

84-1202. (2357) License tax on producers and importers of gypsum and cement. Every person engaged in or carrying on the business in the state of Montana of producing or manufacturing cement, gypsum, gypsum plaster, stucco, wallboard, land plaster or other products of cement or gypsum, and any person who imports into this state any such products for sale or use, must, for the year 1945 and each year thereafter, when engaged in or carrying on such business in this state, pay to the state department of revenue for the use of the state of Montana, a license tax for engaging in and carrying on such business in the state of Montana in an amount equal to the following sums:

1 to 3. * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 15, Ex. L. 1921;
re-en. Sec. 2357, R. C. M. 1921; amd. Sec.
1, Ch. 127, L. 1925; amd. Sec. 1, Ch. 166,
L. 1931; amd. Sec. 1, Ch. 192, L. 1945;
amd. Sec. 37, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the preliminary clause.

Cross-References

Multistate tax compact, sec. 84-6701.

84-1204. (2358) Quarterly payment of tax. Such annual license tax, as imposed by section 84-1202, shall be paid in quarterly installments for the quarters ending, respectively, March 31st, June 30th, September 30th and December 31st, of each year, beginning with the quarter ending March 31, 1945, and the amount of such license tax due for each such quarter shall be paid to the state department of revenue within thirty days after the end of each such quarter.

History: En. Sec. 3, Ch. 15, Ex. L. 1921;
re-en. Sec. 2358, R. C. M. 1921; amd. Sec.
3, Ch. 192, L. 1945; amd. Sec. 38, Ch. 516,
L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1205. (2359) Statements to be filed with department of revenue. Each and every person engaged in or carrying on the business specified in section 84-1202 at the date when this act becomes effective, must, not later than the thirtieth day of April, 1945 and every person who shall, after the date this act becomes effective, engage in such business, must immediately upon engaging therein, file with the state department of revenue a certificate and statement, on forms prescribed by the state department of revenue which shall contain the name under which such person is engaging in and carrying on such business within this state, giving the name of the place or places of business or location of plants or factories within this state; the name and address of the managing agent in this state; if a corporation, joint-stock company or association, or if a firm or copartnership, the names and addresses of the persons composing the same; if an association, joint-stock company or corporation, under the laws of what state organized, its principal place of business and the names and addresses of its principal officers; and such other information as the state department of revenue may deem necessary.

History: En. Sec. 4, Ch. 15, Ex. L. 1921; re-en. Sec. 2359, R. C. M. 1921; amd. Sec. 4, Ch. 192, L. 1945; amd. Sec. 39, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-1206. (2360) Manufacturers to keep records. Every such person shall keep a record in such form as the state department of revenue may require of all cement, gypsum, gypsum plaster, stucco, wallboard, land plaster or other products of cement or gypsum manufactured or produced by such person in this state. Such records shall at all times during the business hours of the day be subject to inspection by the state department of revenue, its members, agents or employees.

History: En. Sec. 5, Ch. 15, Ex. L. 1921; re-en. Sec. 2360, R. C. M. 1921; amd. Sec. 5, Ch. 192, L. 1945; amd. Sec. 40, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning and end of the section.

84-1207. (2361) Quarterly statement and payment of tax. Each and every person must, within thirty days after the quarter ending March 31, 1945, and within thirty days after the end of each following quarter, make out, on forms prescribed by the state department of revenue, and deliver to the state department of revenue, a statement showing the total number of barrels or tons of cement or gypsum produced by such person or used by him in the manufacture of the respective articles or products enumerated in section 84-1202 or imported by such person into the state of Montana for sale or use, during each month of such quarter and during the whole quarter, and such other information as the department may require, together with the total amount due to the state as license taxes for such quarter; and must, within such thirty days, and at the same time such statement is delivered to the state department of revenue, pay to the state department of revenue the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by

the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, or joint-stock company making the same. Any such person engaged in carrying on such business at more than one place or operating more than one factory or plant in this state, may include all thereof in one statement.

History: En. Sec. 6, Ch. 15, Ex. L. 1921; re-en. Sec. 2361, R. C. M. 1921; amd. Sec. 6, Ch. 192, L. 1945; amd. Sec. 41, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

84-1209. (2363) Procedure to ascertain tax on failure of statement—penalty. If any such person shall fail, neglect or refuse to file any statement required by section 84-1207 within the time required, or shall fail to pay the tax required by this act on or before the date such payment is due, the state department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may, regarding the amounts of the respective articles or products enumerated in section 84-1202 manufactured or produced by such person within this state or imported by such person into the state, during such quarter, and during each month thereof, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter, and shall make out a statement, showing the same, and shall add to the amount of such license taxes, a penalty of twenty-five per cent thereof and deliver such statement to the attorney general, who shall proceed to collect the amount of the license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent per annum from the date of the making of such statement by the state department of revenue until paid. Upon request of the state department of revenue, it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to recover the same.

History: En. Sec. 8, Ch. 15, Ex. L. 1921; re-en. Sec. 2363, R. C. M. 1921; amd. Sec. 8, Ch. 192, L. 1945; amd. Sec. 42, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

CHAPTER 13—LICENSE TAXES—COAL MINES

Section

- 84-1302. Strip coal mines license tax—amount—exemptions—testing of samples.
- 84-1303. Payment of annual license tax.
- 84-1304. Strip coal mine operators to file statements.
- 84-1305. Records to be kept by mine operators.
- 84-1306. Quarterly statements of mine operators—payment of license tax.
- 84-1308. Procedure to determine tax—penalty—tax lien.
- 84-1309.1. Disposal of license taxes.

84-1302. (2317) Strip coal mines license tax—amount—exemptions—testing of samples. (1) A person engaged in or carrying on the business of strip coal mining, or engaged in the business of working or operating a strip coal mine or strip coal mining property from which marketable or merchantable coal is extracted or produced by means of strip mining,

whether the person carries on the business or engages in the work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for the year 1921, and each year thereafter, when engaged in or carrying on the business, work or operations, pay to the state treasurer, for the use and benefit of the state of Montana, a license tax for engaging in and carrying on the business, work and operations, in the amounts listed in subsection (2) on marketable or merchantable coal extracted or produced by means of strip mining by a person in the state of Montana and shipped by him during a year, or used by him for any purpose except in connection with the operating of the strip coal mine or mining property from which the coal was extracted or produced by means of strip mining or delivered by him to another person for shipment, sale, or use by the other person; provided, however, that nothing in this act requires laborers or employees, hired or employed, by a person to mine coal, or to work in or about, or in connection with a strip coal mine to pay license taxes, nor is work required to be done in prospecting for, or in developing, or in opening up a strip coal mine or strip coal mining property, considered to be the carrying on of a strip coal mining business, or the engaging in the business of working or operating of a strip coal mine; provided, further, that if during the work of developing or opening up a strip coal mine or strip coal mining property, marketable or merchantable coal is extracted or produced by means of strip mining and sold, then this is considered the carrying on of a strip coal mining business and the engaging in the business of working and operating a strip coal mine.

(2) The license tax paid under subsection (1) of this act is computed as follows:

(a) For each ton of coal having a British thermal unit (BTU) rating per pound of seven thousand (7,000) or less, twelve cents (\$.12) per ton.

(b) For each ton of coal having a BTU rating of seven thousand one (7,001) to eight thousand (8,000), twenty-two cents (\$.22) per ton.

(c) For each ton of coal having a BTU rating of eight thousand one (8,001) to nine thousand (9,000), thirty-four cents (\$.34) per ton.

(d) For each ton of coal having a BTU rating of nine thousand one (9,001) and up, forty cents (\$.40) per ton.

(3) The person paying such license tax shall be entitled to exempt annually from said license tax a total of five thousand (5,000) tons of coal, and such exemption may be applied all to one British thermal unit rating, or may be spread among the several ratings, but the total exemption may not exceed, in any case, five thousand (5,000) tons in any one year.

(4) The Montana state bureau of mines and geology (hereafter bureau) is designated as the testing agency for purposes of this act and is granted the right to promulgate rules and regulations to provide testing data required by this act. The rules and regulations promulgated under this act shall be structured to mutually protect the interest of the persons subject to the provisions of this act and the state of Montana.

(5) A person subject to the provisions of this act shall on or before the first day of August of each calendar year submit to the bureau a

sample of mine run "as is" coal from their coal production area. Additional sampling shall be required of the persons subject to this act at the request of the bureau.

(6) The bureau shall provide a form showing the results of the testing provided for under this act to the persons subject to this tax and the department of revenue prior to the first of September of each calendar year.

History: En. Sec. 2, Ch. 155, L. 1921; re-en. Sec. 2317, R. C. M. 1921; amd. Sec. 1, Ch. 200, L. 1939; amd. Sec. 1, Ch. 244, L. 1967; amd. Sec. 1, Ch. 355, L. 1971; amd. Sec. 1, Ch. 432, L. 1973; amd. Sec. 43, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 432 and once by Ch. 516. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section, embodying the changes made by both amendments.

Amendments

The 1967 amendment inserted "strip" before "coal" in ten places; inserted "strip coal" before "mine" or "mining" in four places; deleted "mined" before "extracted" in four places; inserted "by means of strip mining" after "produced" in four places; and deleted "or coal property or business" before "to pay such license taxes."

The 1971 amendment designated the former section as subsection (1); sub-

stituted "the amounts listed in subsection (2) and subject to the exemption provided in subsection (3) on" for "an amount equal to five cents per ton for each and every ton in excess of fifty thousand tons of" near the middle of subsection (1); and added subsections (2), (3), (4), (5), and (6).

Chapter 432, Laws of 1973, deleted "and subject to the exemption provided in subsection (3)" after "in the amounts listed in subsection (2)" in the middle of subsection (1); inserted letter designations before the clauses in subsection (2); and increased the tax from 4¢ to 12¢ per ton for coal with a BTU rating of 6,000 or less, from 6¢ to 12¢ with a rating of 6,001 to 7,000, from 6¢ to 22¢ with a rating of 7,001 to 7,500, from 8¢ to 22¢ with a rating of 7,501 to 8,000, from 8¢ to 34¢ with a rating of 8,001 to 9,000, and from 10¢ to 40¢ with a rating of more than 9,000 BTU.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization" in subsection (6).

Cross-References

Multistate tax compact, sec. 84-6701.

84-1303. (2318) Payment of annual license tax. Such annual license tax shall be paid in quarterly installments for the quarters ending, respectively, March 31st, June 30th, September 30th, and December 31st in each year, beginning with the quarter ending March 31, 1921, and the amount of the license tax due for each such quarter shall be paid to the state treasurer within thirty (30) days after the end of each such quarter.

History: En. Sec. 3, Ch. 155, L. 1921; re-en. Sec. 2318, R. C. M. 1921; amd. Sec. 5, Ch. 245, L. 1967; amd. Sec. 2, Ch. 355, L. 1971; amd. Sec. 3, Ch. 432, L. 1973.

Amendments

The 1967 amendment added a proviso granting a tax credit for reclamation work performed by a licensee and reported to the bureau of mines and geology.

The 1971 amendment inserted a word limiting the tax credit granted by the 1967 amendment to on-site work; and added a second proviso limiting the credit to one cent per ton of coal removed.

The 1973 amendment deleted the provisos added by the 1967 and 1971 amendments.

Separability Clause

Section 4 of Ch. 432, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

84-1304. (2319) Strip coal mine operators to file statements. Each and every person engaged in or carrying on the business of strip coal min-

ing, or engaged in the business of working or operating any strip coal mine or strip coal mining property in the state of Montana, from which coal of any kind is extracted or produced by means of strip mining at the date when this act becomes effective, must, not later than the thirtieth day of April, 1921, and every person who shall, after the date this act becomes effective, engage in the business of strip coal mining or engage in working or operating any strip coal mine or strip coal mining property in the state of Montana, from which coal of any kind is extracted or produced by means of strip mining must, immediately upon engaging in such business, work or operations, file with the state department of revenue, a certificate and statement, on forms prescribed by such state department of revenue, which shall contain the name under which such person is engaging in and carrying on such business, work and operations, within this state, giving the place or places of business or location of the strip coal mine or strip coal mining property; the name and address of the managing agent in this state, if an association, joint-stock company, or corporation, or if a firm or partnership, the names and addresses of the persons composing the same; if an association or corporation, under the laws of what state organized, its principal place of business and the names and addresses of its principal officers; and such other information as the department may deem necessary.

History: En. Sec. 4, Ch. 155, L. 1921; re-en. Sec. 2319, R. C. M. 1921; amd. Sec. 2, Ch. 244, L. 1967; amd. Sec. 44, Ch. 516, L. 1973.

Amendments

The 1967 amendment inserted "strip coal" before "mine" or "mining" in seven places; inserted "strip" before "coal" in

two places; and substituted "extracted or produced by means of strip mining" for "mined" after "any kind is" in two places.

The 1973 amendment substituted "department of revenue" for "board of equalization" near the middle of the section; and substituted "department" for "board" near the end.

84-1305. (2320) Records to be kept by mine operators. Every such person shall keep a record, in such form as the state department of revenue may require, of all coal mined, extracted or produced, and of all coal sold or otherwise disposed of by such person, and such records shall at all times during the business hours of the day be subject to inspection by the state department of revenue, its members, agents and employees.

History: En. Sec. 5, Ch. 155, L. 1921; re-en. Sec. 2320, R. C. M. 1921; amd. Sec. 45, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning and end of the section.

84-1306. (2321) Quarterly statements of mine operators—payment of license tax. Each and every such person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of each following quarter, make out, in duplicate, on forms prescribed by the state department of revenue, and deliver to the state treasurer, a statement showing the total number of tons, of two thousand pounds each, of marketable or merchantable coal mined, extracted, or produced by such person during such quarter, from all coal mines or coal mining property worked or operated by such person, and shipped by such person, or used by such person for any purpose except in connection with the

operating of the mine or mining property from which the same was mined, extracted or produced, or delivered by such person to any other person for shipment, sale or use by such other person, together with the total amount due to the state as license tax for such quarter; and must within such thirty days, and at the time of delivering such duplicate statement to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana, for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state, of the association, joint-stock company, or corporation making the same. Any person engaged in working or operating more than one coal mine may include all coal mines worked or operated by him in one statement. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state department of revenue.

History: En. Sec. 6, Ch. 155, L. 1921; re-en. Sec. 2321, R. C. M. 1921; amd. Sec. 46, Ch. 516, L. 1973.

partment of revenue" for "board of equalization" near the beginning of the first sentence and at the end of the last sentence.

Amendments

The 1973 amendment substituted "de-

84-1308. (2323) Procedure to determine tax—penalty—tax lien. If any person shall fail, neglect or refuse to file any statement required by section 84-1306, or shall fail to make payment of such license tax within the time therein required, the state department of revenue, shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the number of tons of marketable or merchantable coal mined, extracted or produced by such person, during such quarter and shipped or used by such person, or delivered by such person to any other person for shipment, sale or use by such other person, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter, and shall make out a statement in triplicate, showing the same, and shall add to the amount of such license taxes, ten per centum (10%) thereof as a penalty, and one of such statements shall be filed in the office of the county clerk and recorder of the county in which the coal was produced and one of such statements delivered to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto and interest on the whole thereof, at the rate of eight per centum (8%) per annum from the date of making of such statement by the state department of revenue until paid. Upon request of the state treasurer, it shall be the duty of the attorney general or any county attorney to commence, and prosecute to final determination in any court of competent jurisdiction, an action at law to collect the same.

The license tax assessed against any person under this act, together with penalties and interest thereon, shall be a lien upon any and all property owned by such person within this state and upon the mine from which the coal was produced, which lien shall attach on the date when the license tax is certified to the state treasurer by the state department

of revenue and such lien may be enforced in the name of the state Montana, in the same manner as other liens are enforced at law.

History: En. Sec. 8, Ch. 155, L. 1921; re-en. Sec. 2323, R. C. M. 1921; amd. Sec. 1, Ch. 74, L. 1931; amd. Sec. 2, Ch. 200, L. 1939; amd. Sec. 47, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "state board of equalization" near the beginning and end of the first sentence of the first paragraph, and near the end of the second paragraph.

84-1309.1. Disposal of license taxes. License taxes collected under the provisions of this chapter are allocated as follows:

(1) To the county general fund from which coal was mined three cents (3¢) per ton.

(2) All other revenues from license taxes collected under the provisions of this chapter shall be deposited to the credit of the general fund of the state.

History: En. 84-1309.1 by Sec. 2, Ch. 432, L. 1973; amd. Sec. 1, Ch. 250, L. 1974.

tax to the counties; and providing for a severability clause.

Amendments

The 1974 amendment increased the allocation to the county general fund from one cent to three cents per ton.

Effective Date

Section 2 of Ch. 250, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

Title of Act

An act amending sections 84-1302 and 84-1303, R. C. M. 1947, to change the basis for determining and raising the strip coal mines license tax and removing the reclamation credit; providing distribution for a portion of the strip coal mines license

CHAPTER 14—LICENSE TAXES—COAL RETAILERS

Section

- 84-1403. Retailers to file statements—contents.
- 84-1405. Record of coal sold for retail.
- 84-1406. Statement of coal sold—form and filing.
- 84-1408. Procedure to determine tax on failure to file statement—penalty.
- 84-1412. Revocation of license.

84-1402. (2328) License to retail coal—fees.

Cross-References

Multistate tax compact, sec. 84-6701.

84-1403. (2329) Retailers to file statements—contents. Each and every person engaged in or carrying on such occupation or business in the state of Montana at the date when this act becomes effective must, not later than the 30th day of April, 1921, and every person who shall engage in or carry on such occupation or business after the date when this act becomes effective must immediately after engaging in such occupation or business, make out and file with the state department of revenue a certificate and statement, on forms prescribed by the state department of revenue, which shall contain the name under which such person is engaging in and carrying on such occupation and business in this state, giving the location of each place of business of such person, the name and address of the managing agent in this state, if an association, joint-stock company, syndicate, or corporation; or, if a firm or copartnership the names and addresses of the persons composing the same; if an

association, joint-stock company, syndicate, or corporation, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers, and such other information as the state department of revenue may require.

History: En. Sec. 3, Ch. 3, Ex. L. 1921;
re-en. Sec. 2329, R. C. M. 1921; amd. Sec.
48, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" twice near the middle of the section and near the end of the section.

84-1405. (2331) Record of coal sold for retail. Each and every person engaging in or carrying on such occupation or business in this state shall keep a record showing all coal purchased or received by or delivered to such person for sale by such person at retail in this state for the mining of which coal no "mine operator" has paid, or assumed liability for the payment of, any license fee to the state of Montana under any law of this state, which record shall show the date of each purchase or delivery, the number of tons contained therein, and the name of the person from whom the same was purchased or received, which records shall at all times during the business hours of the day be subject to inspection by the state department of revenue, its members, agents, or employees.

History: En. Sec. 5, Ch. 5, Ex. L. 1921;
re-en. Sec. 2331, R. C. M. 1921; amd. Sec.
49, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1406. (2332) Statement of coal sold—form and filing. Each and every person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of each following quarter, make out in duplicate, on forms prescribed by the state department of revenue, and deliver to the state treasurer, a statement showing the total number of tons of coal sold by such person during such quarter for the mining of which no "mine operator" has paid, or assumed liability for the payment of, any license fee to the state of Montana under any law of this state, together with the total amount due to the state of Montana as license fees from such person for such quarter; and must within such thirty days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license fees shown by such statement to be due to the state of Montana for the quarter for which said statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, joint-stock company, syndicate, or corporation making the same. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state department of revenue.

History: En. Sec. 6, Ch. 3, Ex. L. 1921;
re-en. Sec. 2332, R. C. M. 1921; amd. Sec.
50, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the middle of the first sentence and at the end of the last sentence.

84-1408. (2334) Procedure to determine tax on failure to file statement—penalty. If any person shall fail, neglect, or refuse to make or file the

statement required by section 84-1406, or shall fail to make payment of such license tax within the time therein required, the state department of revenue shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the matters required to be set forth in such statement and shall fix and determine the amount of the license fees due from such person for such quarter, and shall make out a statement in duplicate showing such matters, and the amount of such license fees, and shall add to the amount of such license fees twenty-five per centum (25%) thereof as a penalty, and deliver one (1) of such statements to the state treasurer, who shall proceed to collect the amount of such license fees, with the penalty added thereto, and interest on the whole thereof at the rate of eight per centum (8%) per annum from the date of the making of such statement by the department of revenue until paid. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

History: En. Sec. 8, Ch. 3, Ex. L. 1921; re-en. Sec. 2334, R. C. M. 1921; amd. Sec. 2, Ch. 74, L. 1931; amd. Sec. 51, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "state board of equalization" near the beginning and end of the first sentence.

84-1412. (2338) Revocation of license. The state department of revenue shall have the power to revoke the license of any person upon the conviction of such person of the violation of any of the provisions contained in the two preceding sections, but no revocation shall be made until due notice of the intention of the state department of revenue so to do shall have been given to such person and such person afforded an opportunity to appear before such state department of revenue and show cause why such license should not be revoked.

History: En. Sec. 12, Ch. 3, Ex. L. 1921; re-en. Sec. 2338, R. C. M. 1921; amd. Sec. 52, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

CHAPTER 15—LICENSE TAXES—CORPORATION LICENSE TAX

Section

- 84-1501. Corporation license tax—organizations exempt therefrom—alternative tax based on gross sales.
- 84-1501.2. Election by small business corporation.
- 84-1501.5. Minimum fee of corporations qualifying under section 84-1501.2 unaffected.
- 84-1501.6. State and national banks subject to tax.
- 84-1501.7. Effective dates.
- 84-1502. Deductions allowed in computing income.
- 84-1503. Segregation of income within and without state.
- 84-1504. Computation of license tax—return of net income to be filed—definitions.
- 84-1505. Assessment and collection of tax.
- 84-1505.1. Release of tax liens.
- 84-1505.2. Immediate payment of tax or deficiency due may be required if delay would jeopardize collection.
- 84-1507. Returns and corrections to be public records.
- 84-1508. Regulations—attendance of witnesses—arbitrary assignment of net income.
- 84-1508.1. Determination of tax liability—interest on deficiencies and overpayments.
- 84-1508.2. Periods of limitation—limitations for notification of additional tax extended if taxpayer fails to report change in federal tax—waiver.

- 84-1509. Consolidated returns—computation and procedure on.
- 84-1512. Where omission deemed committed—certificate of department as evidence.
- 84-1514. Delinquency—suspension—forfeiture—dissolution.
- 84-1515. Reviver of corporation after suspension or forfeiture.
- 84-1516. Penalty for violation of act.
- 84-1517. Failure to make return—estimate and investigation of net income—copy of federal return to be furnished on request—report of change in federal tax—copy of amended federal returns.
- 84-1518. Reciprocity with federal and other states' revenue officers regarding returns.

84-1501. (2296) Corporation license tax—organizations exempt therefrom—alternative tax based on gross sales. The term corporation includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity, and all other corporations whether created, organized or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States. Every corporation, except as hereinafter provided and except as provided in section 40-2821 (5), R. C. M. 1947, engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state such percentage or percentages of its total net income for the preceding year at the rate hereinafter set forth. In the case of corporations having income from business activity which is taxable both within and without this state, the license fee shall be measured by the net income derived from or attributable to Montana sources as determined under section 84-1503.

The percentage of net income to be paid under this section shall be six and three-quarters per cent ($6\frac{3}{4}\%$) of all net income for the taxable period. The rate set forth in this act shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971. Every corporation subject to taxation under this act shall, in any event, pay a minimum tax of not less than fifty dollars (\$50).

Pursuant to the provisions of article III, section 2, of the Multistate Tax Compact (Title 84, chapter 67, R. C. M. 1947) every corporation deriving income from sources both within and without the state of Montana and required to file a return and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed one hundred thousand dollars (\$100,000), may elect to pay a tax of one-half of one per cent (0.5%) of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under this section. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of article IV, sections 16 and 17, of the Multistate Tax Compact.

There shall not be taxed under this title any income received by any—

- (a). Labor, agricultural or horticultural organization;
- (b). Fraternal beneficiary, society, order or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents;

(c) to (k). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 79, L. 1917; Subd. 16 amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1933; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965; amd. Sec. 1, Ch. 4, Ex. L. 1967; amd. Sec. 1, Ch. 11, Ex. L. 1969; amd. Sec. 1, Ch. 16, L. 1971; amd. Sec. 1, Ch. 333, L. 1971; amd. Sec. 1, Ch. 5, Ex. L. 1971; amd. Sec. 1, Ch. 7, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 468, L. 1973; amd. Sec. 1, Ch. 484, L. 1973; amd. Sec. 1, Ch. 5, L. 1974.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 468 and once by Ch. 484. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1967 amendment, in the first paragraph, inserted "and except as provided in section 40-2821 (5), R. C. M. 1947" the first place it appears in the second sentence; and, in the second paragraph, increased the percentage of net income to be paid under this section from $5\frac{1}{4}\%$ to $5\frac{1}{2}\%$, and inserted the second sentence.

The 1969 amendment, in the first sentence of the second paragraph, raised the percentage of net income from "five and one-half per cent ($5\frac{1}{2}\%$)" to "six and one-quarter per cent ($6\frac{1}{4}\%$)"; in the second sentence deleted "all" before "taxable years" and substituted "1969" for "1967"; inserted a third sentence reading: "For taxable years ending on or after February 28, 1971, the percentage of net income to be paid under this act shall be five and one-half per cent ($5\frac{1}{2}\%$) of all net income for the taxable period."; and raised the minimum tax stated in the fourth sentence from "\$10" to "\$50."

Chapter 16, Laws of 1971, inserted "and except as provided in section 40-2821(5), R. C. M. 1947" the second place it appears in the second sentence of the first paragraph; and inserted the present third paragraph providing for an alternative corporation license tax.

Chapter 333, Laws of 1971, deleted "ending on or" after "taxable years" in the second sentence of the second paragraph; and deleted the former third sentence inserted in the second paragraph by the 1969 amendment.

Extraordinary Session Chapter 5, Laws of 1971, substituted "all taxable years ending on or after" for "taxable years

after" in the second sentence of the second paragraph.

The Second Extraordinary Session, Chapter 7, Laws of 1971, increased the rate specified in the second paragraph from $6\frac{1}{4}\%$ to $6\frac{3}{4}\%$; and omitted the third paragraph, which had been inserted by Ch. 16, Laws of 1971.

Chapter 468, Laws of 1973, reinserted the third paragraph, which had been inserted by Chapter 16, Laws of 1971, but omitted by the amendment in the 1971 2nd Extraordinary Session.

Chapter 484, Laws of 1973, inserted the third sentence in the second paragraph.

The 1974 amendment rewrote the first paragraph which read: "The term corporation includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity whether created under and pursuant to state laws, agreements, declarations of trust. Every corporation, except as hereinafter provided and except as provided in section 40-2821 (5), R. C. M. 1947, organized and existing under the laws of the state of Montana and engaged in business therein, shall annually pay to the state treasurer, as a license fee for carrying on business in said state of Montana, such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth; and every corporation, except as hereinafter provided, and except as provided in section 40-2821 (5), R. C. M. 1947, organized and existing under the laws of any other state or country, or the United States, and engaged in business in the state of Montana, shall annually pay for the exclusive use and benefit of the state of Montana a license fee for carrying on its business in the state of Montana of such percentage or such percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth"; and made a minor change in phraseology in subdivision (b).

Effective Dates

Section 2 of Ch. 318, Laws 1967 read: "The rate set forth in this act shall be effective as to all taxable years ending on or after February 28, 1967, whether on the calendar or fiscal year basis."

Section 3 of Ch. 318, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 20, 1967.

Section 2 of Ch. 16, Laws 1971 read "This act shall be effective for taxable years beginning on and after January 1, 1971."

Section 2 of Ch. 333, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Section 2 of Ch. 5, Ex. Laws 1971, provides: "The rate set forth in this act shall be effective as to all taxable years ending on or after February 28, 1971, whether on the calendar or fiscal year basis."

Section 3 of Ch. 5, Ex. Laws 1971 provided the act should be in effect from and after its passage and approval. Approved April 6, 1971.

Repealing Clause

Section 2 of Ch. 484, Laws 1973 read

"Section 84-1501.8, R. C. M. 1947, is repealed."

Cross-References

Corporation income tax, sec. 84-6901 et seq.

Multistate tax compact, sec. 84-6701.

Sale of Assets in Liquidation

Directors and trustees in liquidation of a liquidated corporation were entitled to a refund of that portion of the corporate license tax paid upon the gain realized by the corporation in the sale of its assets in liquidation. *Barth v. Montana State Board of Equalization*, 148 M 259, 419 P 2d 484, 485.

84-1501.1. Definitions.

References

Barth v. Montana State Board of Equalization, 148 M 259, 419 P 2d 484, 485.

84-1501.2. Election by small business corporation. (a) and (b). * * *

[Same as parent volume.]

(c) Where and how made.

(1) In general. An election under subsection (a) may be made by a small business corporation for any taxable year at any time during the first month of such taxable year, or at any time during the month preceding such first month. Such election shall be made in such manner as the department of revenue shall prescribe by regulations.

(2). * * * [Same as parent volume.]

(d). * * * [Same as parent volume.]

(e) Termination.

(1) New shareholders. An election under subsection (a) made by a small business corporation shall terminate if any person who was not a shareholder in such corporation—

(A) and (B). * * * [Same as parent volume.]

becomes a shareholder in such corporation and does not consent to such election within such time as the department of revenue shall prescribe by regulations. Such termination shall be effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation and for all succeeding taxable years of the corporation.

(2) Revocation. An election under subsection (a) made by a small business corporation may be revoked by it for any taxable year after the first taxable year for which the election is effective. An election may be revoked only if all persons who are shareholders in the corporation on the day on which the revocation is made consent to the revocation. A revocation under this paragraph shall be effective—

(A). * * * [Same as parent volume.]

(B) for the taxable year following the taxable year in which made, if made after the close of such first month, and for all succeeding taxable

years of the corporation. Such revocation shall be made in such manner as the state department of revenue shall prescribe by regulations.

(3). * * * [Same as parent volume.]

(f) Election after termination. If a small business corporation has made an election under subsection (a) and if such election has been terminated or revoked under subsection (e), such corporation (and any successor corporation) shall not be eligible to make an election under subsection (a) for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such termination or revocation is effective, unless the state department of revenue consents to such election.

(g). * * * [Same as parent volume.]

(h) Every electing corporation shall be required to pay the minimum fee of ten dollars (\$10.00) required by section 84-1501.

History: En. Sec. 2, Ch. 122, L. 1959; amd. Sec. 53, Ch. 516, L. 1973.

paragraph of subdivision (e)(1), in subdivision (e)(2)(B) and in subsection (f); and made a minor change in style.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in subdivision (c)(1), in the final

References

Barth v. Montana State Board of Equalization, 148 M 259, 419 P 2d 484, 485.

84-1501.3. Small business option unavailable on dissolution, etc.

Application

This section applies only to shifting of the tax burden under sections 84-1501.1

and 84-1501.2. Barth v. Montana State Board of Equalization, 148 M 259, 419 P 2d 484, 485.

84-1501.4. Repealed.

Repeal

Section 84-1501.4 (Sec. 1, Ch. 316, L. 1967), exempting state banks from the

corporation license tax until national banks are taxable, was repealed by Sec. 2, Ch. 23, Laws 1971.

84-1501.5. Minimum fee of corporations qualifying under section 84-1501.2 unaffected. Notwithstanding the provisions of this act, corporations electing and qualifying under section 84-1501.2 shall pay a minimum fee of ten dollars (\$10).

History: En. Sec. 2, Ch. 11, Ex. L. 1969.

Effective Date

Section 3 of Ch. 11, Ex. Laws 1969 pro-

vided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

84-1501.6. State and national banks subject to tax. Effective with taxable years beginning on and after January 1, 1971, every bank organized under the laws of the state of Montana or of any other state and every national bank organized under the laws of the United States are subject to the Montana corporation license tax provided for under Title 84, chapter 15, R. C. M. 1947.

History: En. 84-1501.6 by Sec. 1, Ch. 23, L. 1971.

R. C. M. 1947; and providing effective dates.

Title of Act

An act subjecting state and national banks to the Montana corporation license tax; and repealing section 84-1501.4,

Repealing Clause

Section 2 of Ch. 23, Laws 1971 read "Section 84-1501.4, R. C. M. 1947, is repealed."

84-1501.7. Effective dates. For the taxable year beginning on and after January 1, 1971, section 1 [84-1501.6] of this act is effective in accordance with Public Law 91-156, section 1 (12 U.S.C. 548 (5)). For taxable years beginning on and after January 1, 1972, section 1 [84-1501.6] of this act is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548).

History: En. Sec. 3, Ch. 23, L. 1971.

84-1501.8. Repealed.

Repeal

Section 84-1501.8 (Sec. 2, Ch. 7, 2nd Ex. L. 1971), relating to effective date of the 1971 rate change, and providing a rate re-

duction if the 1971 referred measure was approved, was repealed by Sec. 2, Ch. 484, Laws 1973.

84-1502. (2297) Deductions allowed in computing income. In computing the net income the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

1. * * * [Same as parent volume.]

2. (A) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such allowance to be determined according to the provisions of section 167 of the internal revenue code in effect with respect to the taxable year. All elections for depreciation shall be the same as the elections made for federal income tax purposes. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements or betterments made to increase the value of any property or estate and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(B) (a) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deductions allowed by this section, 84-1502, over the gross income, with the modifications specified in paragraph (b) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three (3) taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five (5) taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in paragraph (b) (ii) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss

for the loss period or any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.

(b) The modifications referred to in paragraph (a) of this subsection shall be as follows:

(i) No net operating loss deduction shall be allowed.

(ii) The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.

(c) A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(d) In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger.

In the case of a consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(e) Notwithstanding the provisions of section 84-1508.1 (e), R. C. M., 1947, interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(f) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall be allowed only with respect to taxable periods beginning on or after January 1, 1971.

3. In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements, such reasonable allowance to be determined according to the provisions of the internal revenue code in effect for the taxable year. All elections made under the internal revenue code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes.

4. * * * [Same as parent volume.]

5. Interest income from obligations of the state of Montana, or any political subdivision or municipality of the state of Montana.

6. Taxes paid within the year except the following:

(c) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

(d) Taxes imposed by any other state or country upon or measured by net income or profits.

Taxes deductible under this act shall be construed to include taxes imposed by any county, school district or municipality of this state.

History: En. Sec. 2, Ch. 79, L. 1917; amd. Sec. 1, Ch. 69, L. 1919; amd. Sec. 1, Ch. 258, L. 1921; re-en. Sec. 2297, R. C. M. 1921; amd. Sec. 2, Ch. 166, L. 1933; amd. Sec. 1, Ch. 133, L. 1947; amd. Sec. 1, Ch. 263, L. 1959; amd. Sec. 1, Ch. 235, L. 1971; amd. Sec. 1, Ch. 358, L. 1971; amd. Sec. 1, Ch. 320, L. 1973; amd. Sec. 54, Ch. 516, L. 1973; amd. Sec. 1, Ch. 54, L. 1974.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 320 and once by Ch. 516. Neither amendment mentioned or incorporated the changes made by the other, but the changes made by Ch. 516, the later enactment, appear nugatory in that the phraseology dealt with was eliminated by Ch. 320.

Amendments

Chapter 235, Laws of 1971, inserted the present subdivision 5; and renumbered former subdivisions 5 and 6 as subdivisions 6 and 7.

Chapter 358, Laws of 1971, designated the former subdivision 2 as subdivision 2 (A); added subdivision 2 (B); substituted "or" for "of" after "net income" in subdivision 5(c); and deleted subdivision 7 relating to insurance companies.

Chapter 320, Laws of 1973 inserted "and obsolescence" in the first sentence of subdivision 2(A); substituted "used in the trade or business" for "arising out of its use or employment in the business or trade" in the first sentence of subdivision 2(A); inserted "such allowance to be determined and according to the provisions of section 167 of the internal revenue code in effect with respect to the taxable year" at the end of the first sentence in subdivision 2(A); inserted the second sentence in subdivision 2(A); inserted "consolidated corporations prior to the date of" in the second paragraph of subdivision 2(B)(d); and substantially rewrote subsection 3, to adopt federal rules and to require the same election as made on the federal return.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization" in subsection 3.

The 1974 amendment inserted subdivision 6(d).

Effective Dates

Section 2 of Ch. 235, Laws 1971 read "The provisions of this act shall apply to all taxable years commencing on or after December 31, 1970, whether on a calendar or fiscal year basis."

Section 3 of Ch. 235, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

Section 2 of Ch. 358, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Section 2 of Ch. 320, Laws 1973 read "This act is effective for taxable years ending on and after December 31, 1972."

Section 2 of Ch. 54, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved February 27, 1974.

DECISIONS UNDER FORMER LAW

Operating Loss

Any net operating loss deduction previously prevented under section 84-1504, including by reference net operating losses allowable under section 172 of the Internal Revenue Code, are eliminated under the new and amended definition of net operating loss contained in this section. *Lazy*

JD Cattle Co. v. State Board of Equalization, — M —, 504 P 2d 287.

Nothing in the 1971 amendment to this section indicates an intention on the part of the legislature to repeal the operating loss deduction under section 84-1504 retroactively. *Lazy JD Cattle Co. v. State Board of Equalization*, — M —, 504 P 2d 287.

84-1503. (2297.1) Segregation of income within and without state.

(1) Any corporation having income from business activity which is taxable both within and without this state shall allocate and apportion its net income as provided in this section.

(a) A corporation engaged in a unitary business within and without Montana must apportion its business income as provided for under subsection 9 of this section. A business is unitary when the operation of the business within the state is dependent upon or contributory to the operation of the business outside the state or if the units of the business within and without the state are closely allied and not capable of separate maintenance as independent business.

(b) A corporation not engaged in a unitary business must allocate its business income by means of separate accounting methods, provided its books and records are so kept that the income and expenses attributable to business operations within the state can be properly segregated from total income and expense. If the corporation's books and records do not permit such proper segregation, its business income must be apportioned according to the provisions of subsection 9 of this section.

(2) Definitions:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Nonbusiness income" means all income other than business income.

(c) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(d) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(e) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs 4 through 8 of this section.

(f) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(3) For the purposes of allocation and apportionment of income, a corporation is taxable in another state if:

(a) by reason of the corporation's business activities carried on in that state it is subjected to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or

(b) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(4) Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this section.

(5) (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state, or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(6) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

- (i) the property had a situs in this state at the time of the sale, or
- (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(7) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(8) (a) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the payer in this state, or

(ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state: If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(9) All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3).

(10) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state in the production of business income during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in the production of business income during the tax period.

(11) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(12) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the tax ad-

ministrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(13) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation attributable to the production of business income, and the denominator of which is the total amount paid everywhere during the tax period for compensation attributable to the production of business income.

(14) Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state; or
(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and

(i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or

(ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(15) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(16) Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and

(i) the purchaser is the United States government or

(ii) the taxpayer is not taxable in the state of the purchaser.

(17) Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(18) If the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting, provided, the taxpayer's activities in this state are separate and distinct from its operations conducted outside this state and are not a part of a unitary business operation conducted within and without this state. For purposes of this section a "unitary business" is one in which the business conducted within the state is dependent upon

or contributory to the business conducted outside this state or if the units of the business within and without this state are closely allied and not capable of separate maintenance as independent businesses;

(b) the exclusions of any one (1) or more of the factors;

(c) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(19) The department of revenue shall prescribe regulations to carry out this section and shall publish such regulations and amendments thereto.

History: En. Sec. 3, Ch. 166, L. 1933; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973; amd. Sec. 2, Ch. 5, L. 1974.

Amendments

The 1969 amendment substituted "not less than once every three (3) years" for "not less than once a year" after "board shall publish" and inserted "and all changes * * * as they occur" in the second sentence; substituted "may not change * * * or vice versa" for "cannot change from one method of accounting to another method of accounting" in the last sentence.

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

The 1974 amendment rewrote this section which read: "If the income of any corporation from sources within the state cannot be properly segregated from income without the state, then, in that event, the amount of the net income returned shall be that proportion of the taxpayer's total net income which the taxpayer's gross business done in the state of Montana bears to the total gross business of the taxpayer, and apportionment shall be made under the rules and regula-

tions prescribed by the state department of revenue, giving consideration to sales, property and payroll and such other factors as may be deemed applicable; provided, however, that the state department of revenue shall, upon the presentation of satisfactory evidence, determine that the income from sources within the state of Montana may be properly segregated from income from sources without the state of Montana and shall allow separate accounting. The department shall publish not less than once every three (3) years, all rules and regulations and all changes in rules and regulations as they occur pertaining to this section. All decisions by the department under this section shall be subject to judicial review in an action prosecuted by the corporation in the district court of Lewis and Clark county. The taxpayer may not change from apportionment by formula to separate accounting or vice versa without first obtaining permission from the department."

Effective Date

Section 3 of Ch. 5, Laws 1974 read "This act shall apply to all taxable years on and after December 31, 1973, whether on a fiscal or calendar year basis."

84-1504. (2299) Computation of license tax—return of net income to be filed—definitions. (1) The license fee shall be computed on the basis of the corporation's total net income for the taxable period. The corporation's taxable period shall be its taxable year for federal income tax purposes. In the event a corporation changes its taxable year, it shall promptly notify the state department of revenue.

(2) Every corporation, subject to the license fee imposed under this chapter, shall for each taxable period render a true and accurate return of its net income for the taxable period in the manner and form to be prescribed by the state department of revenue, and containing such facts, data and information as are appropriate and in the opinion of the state department of revenue necessary to determine the correctness of the net income returned and to carry out the provisions of this act. The return

shall be signed by one (1) of the following: the president, the vice-president, the treasurer, the assistant treasurer, or chief accounting officer. If the corporation is reporting on a calendar year basis the return shall be filed with the department of revenue on or before the fifteenth day of May following the close of the calendar year, and if reporting on a fiscal year basis the return shall be filed with the department on or before the fifteenth day of the fifth month following the close of its fiscal year. Upon application a corporation shall be allowed an automatic extension of time for filing its return to the fifteenth day of the third month following the date prescribed for filing of its tax return. The application is to be made on such forms as the department of revenue shall prescribe. The department of revenue may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists. The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. The term gross income means all income recognized in determining the corporation's gross income for federal income tax purposes; but shall include interest exempt from federal income tax. No corporation is exempt from the corporation license tax unless specifically provided for under section 84-1501. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under section 84-1501 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal internal revenue code in effect for the taxable year. The term "net income" means the gross income of the corporation less the deductions set forth in section 84-1502.

(3). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 79, L. 1917; re-en. Sec. 2299, R. C. M. 1921; amd. Sec. 1, Ch. 146, L. 1923; amd. Sec. 1, Ch. 165, L. 1947; amd. Sec. 1, Ch. 235, L. 1961; amd. Sec. 3, Ch. 186, L. 1963; amd. Sec. 1, Ch. 372, L. 1973; amd. Sec. 56, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 372 and once by Ch. 516. Neither amendatory act mentioned the other. Since the changes made by Ch. 372 include the changes made by Ch. 516, the compiler has used the text of Ch. 372 above.

Amendments

Chapter 372, Laws of 1973, rewrote subsection (1), for prior version of which see parent volume; substituted "taxable period" for "year hereafter, for the year ending on the thirty-first day of December, or for its fiscal year selected under the provisions hereof" near the beginning of the first sentence in subsection (2); substituted "net income for the taxable period" for "annual net income" in the first sentence of subsection (2); substituted "department of

revenue" for "board of equalization" and "department" for "board" throughout subsection (2); substituted the requirement for signature by one of the enumerated officers for a requirement of signature by both a principal officer and a financial officer; substituted "following the close of the calendar year" for "in each year" following "fifteenth day of May" in the third sentence of subsection (2); inserted the seventh sentence in subsection (2); substituted "all income recognized in determining the corporation's gross income for federal income tax purposes" for "the income from all sources within the state of Montana recognized in the determination of the corporation's federal income tax liability" in the eighth sentence in subsection (2); inserted the ninth sentence in subsection (2); inserted "set forth in section 84-1502" at the end of the last sentence in subsection (2); and deleted from the end of subsection (2) two sentences disclaiming intent to allow certain federal deductions and also defining "fiscal year."

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization" near the end of subsection (1) and throughout subsection (2).

Effective Date

Section 2 of Ch. 372, Laws 1973 read "This act shall apply to taxable years beginning on and after January 1, 1973."

Sale of Assets in Liquidation

Directors and trustees in liquidation of

a liquidated corporation were entitled to a refund of that portion of the corporate licensed tax paid upon the gain realized by the corporation in the sale of its assets in liquidation. *Barth v. Montana State Board of Equalization*, 148 M 259, 419 P 2d 484, 485.

DECISIONS UNDER FORMER LAW

Operating Loss Deduction

With the exception of the exempt interest exclusion and dividend deduction contained in the Federal Internal Revenue Code, the legislature left intact the interrelation of state corporation licensed gross and net income and federal income tax gross and net income as provided in the Federal Internal Revenue Code; the net operating loss deduction in section 172 of the Federal Internal Revenue Code was

allowable in computing a state corporation tax liability. *Lazy JD Cattle Co. v. State Board of Equalization*, — M —, 504 P 2d 287.

Nothing in the 1971 amendment to section 84-1502 indicated an intention on the part of the legislature to repeal this section's operating loss deduction retroactively. *Lazy JD Cattle Co. v. State Board of Equalization*, — M —, 504 P 2d 287.

84-1505. (2300) Assessment and collection of tax. (1) Assessment and payment of tax, penalty and interest. All taxpayers shall compute the amount of tax payable under this act and shall remit such amount to the state department of revenue on or before the fifteenth day of the fifth month following the close of the taxable period. If the tax is not paid on or before the due date, there shall be assessed a penalty of ten per cent (10%) of the amount of the tax, unless it is shown that the failure was due to reasonable cause and not due to neglect. If any tax due under this chapter is not paid when due, by reason of extension granted, or otherwise, interest shall be added thereto at the rate of nine per cent (9%) per annum from the due date until paid.

(2) Levy upon and sale of property for payment of corporation licenses taxes. If any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the department shall issue a warrant directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the corporation owning the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified, not more than sixty (60) days from the date of the warrant. The sheriff shall within five (5) days after the receipt of the warrant, file with the clerk of the district court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the corporation against whom it is levied in the same manner as a judgment docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in

respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the department a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof, such agent shall have the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the department shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax.

(3) Action by attorney general. Action may be brought at any time by the attorney general of the state at the instance of the department, in the name of the state to recover the amount of any taxes, penalties and interest due under this act.

History: En. Sec. 5, Ch. 79, L. 1917; re-en. Sec. 2300, R. C. M. 1921; amd. Sec. 2, Ch. 146, L. 1923; amd. Sec. 1, Ch. 209, L. 1945; amd. Sec. 1, Ch. 102, L. 1961; amd. Sec. 4, Ch. 186, L. 1963; amd. Sec. 1, Ch. 324, L. 1969; amd. Sec. 67, Ch. 405, L. 1973.

Amendments

The 1969 amendment raised the interest rate on unpaid taxes from "six per cent

(6%)" to "nine per cent (9%)" per annum.

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

Effective Date

Section 2 of Ch. 324, Laws 1969 read "This act is effective as to taxable years ending on and after December 31, 1963."

84-1505.1. Release of tax liens. (1) The state department of revenue shall issue a certificate of release of any lien imposed with respect to any tax due under Title 84, chapter 15, R. C. M. 1947, when it finds that the liability for the amount of tax assessed, together with all penalties and interest in respect thereof has been fully satisfied. The state department of revenue may issue a certificate of release if it determines that the lien is unenforceable.

(2) The state department of revenue may issue a certificate of discharge of any part of the property subject to any lien imposed with respect to any tax due under Title 84, chapter 15, R. C. M. 1947, if:

(a) It finds that the fair market value of that part of the property remaining subject to the lien is at least double the value of the unsatisfied liability secured by such lien and the amount of all other liens upon the property which may have priority to such lien;

(b) There is paid to the state treasurer in part satisfaction of the liability secured by the lien, an amount which shall not be less than the value, as determined by the state department of revenue, of the interest of the state of Montana in the part to be discharged; or

(c) The state department of revenue determines at any time that the interest of the state of Montana in the part to be so discharged has no value.

History: En. Sec. 1, Ch. 53, L. 1967; amd. Sec. 57, Ch. 516, L. 1973.

Title of Act

An act to permit release of lien and discharge of property from force of lien

imposed with respect to corporation license tax liability.

Amendments

The 1973 amendment substituted "de-

partment of revenue" for "board of equalization" in two places in subsection (1); near the beginning of subsection (2); and in subdivisions (2)(b) and (2)(c).

84-1505.2. Immediate payment of tax or deficiency due may be required if delay would jeopardize collection. If the state department of revenue finds that the assessment or collection of the tax or a deficiency in tax due under any corporation license tax statute of Montana for any taxable period will be jeopardized in whole or in part by delay, it may mail notice of its findings to the taxpayer together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the board may declare the taxable period of the taxpayer immediately terminated, and shall mail or issue notice of its findings to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated. A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once.

History: En. Sec. 1, Ch. 246, L. 1969; amd. Sec. 58, Ch. 516, L. 1973.

tana if the board finds that the collection of the tax or deficiency will be jeopardized in whole or in part by delay.

Title of Act

An act which empowers the state board of equalization to require immediate payment of a tax or deficiency due under any corporation license tax statute of Mon-

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-1507. (2302) Returns and corrections to be public records. When the assessment shall be made as provided in this act, the returns, together with any corrections thereof which may have been made by the state department of revenue, shall be filed in the office of said department, and shall constitute public records and be open to inspection as such only upon the order of the governor, and under rules and regulations to be prescribed by the state department of revenue.

History: En. Sec. 7, Ch. 79, L. 1917; re-en. Sec. 2302, R. C. M. 1921; amd. Sec. 3, Ch. 146, L. 1923; amd. Sec. 59, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-1508. (2303) Regulations—attendance of witnesses—arbitrary assignment of net income. The state department of revenue shall have power to prescribe forms for the returns and notices and such other regulations as may from time to time be found necessary for the purpose of carrying into effect the provisions of this act. Jurisdiction is hereby conferred upon the district court of the first judicial district of the state of Montana, in and for the county of Lewis and Clark, to compel attendance of witnesses to testify before the state department of revenue, together with the production of books and such other testimony by appropriate process. When the state department of revenue has reason to believe that the business of any corporation is so conducted as either directly or indirectly to distort the true net income of the corporation and the net income properly attributable to this state, whether by the

arbitrary shifting of income through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another corporation carrying on business under a substantially common control, it may require the disclosure of such facts as it deems necessary for the proper computation of the entire net income and the net income properly attributable to this state, and in determining the same, the department shall have regard to the fair profits which would normally arise from the conduct of the business.

History: En. Sec. 8, Ch. 79, L. 1917; re-en. Sec. 2303, R. C. M. 1921; amd. Sec. 4, Ch. 146, L. 1923; amd. Sec. 4, Ch. 166, L. 1933; amd. Sec. 5, Ch. 186, L. 1963; amd. Sec. 60, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in four places.

84-1508.1. Determination of tax liability—interest on deficiencies and overpayments. (a) Deficiency assessments. If, the state department of revenue determines that the amount of tax due is greater than the amount disclosed by the return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within thirty (30) days after the mailing of the notice, the taxpayer may file with the state department of revenue a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the thirty (30) day period. If such protest is filed, the state department of revenue shall reconsider the proposed assessment, and if the taxpayer has so requested, shall grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented in the event of an oral hearing, the state department of revenue's action upon the protest is final when it mails notice of its action to the taxpayer.

When a deficiency is determined and the tax becomes final, the state department of revenue shall mail notice and demand to the taxpayer for the payment thereof, and the tax shall be due and payable at the expiration of ten (10) days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest from the date specified in section 84-1505 for payment of the tax. A certificate by the state department of revenue of the mailing of the notices specified in this subsection shall be prima facie evidence of the computation and levy of the deficiency in tax and of the giving of the notices.

(b) Overpayment of tax—refunds and credits. If the state department of revenue determines that the amount of tax, penalty or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger or consolidation, or to its shareholders upon dissolution.

If the state department of revenue disallows any claim for refund, it shall notify the taxpayer accordingly. At the expiration of thirty (30) days from the mailing of the notice, the state department of revenue's

action shall become final, unless within the said thirty (30) day period the taxpayer appeals in writing from the action of said department to the state tax appeal board. If such appeal is made, the state tax appeal board shall grant the taxpayer an oral hearing. After consideration of the appeal and evidence presented, the state tax appeal board shall forthwith mail notice to the taxpayer of its determination. The board's determination is final when it mails notice of its action to the taxpayer.

(c) Except as hereinafter provided for, interest shall be allowed on overpayments at the rate of six per cent (6%) per annum from the due date of the return or from the date of overpayment (whichever date is later) to the date the department of revenue approves refunding or crediting of the overpayment. Interest shall not accrue during any period the processing of a claim for refund is delayed more than thirty (30) days by reason of failure of the taxpayer to furnish information requested by the state department of revenue for the purpose of verifying the amount of the overpayment. No interest shall be allowed (1) if the overpayment is refunded within six (6) months from the date the return is due or from the date the return is filed, whichever is later; or (2) if the amount of interest is less than one dollar (\$1.00).

A payment not made incident to a bona fide and orderly discharge of an actual corporation license tax liability or one reasonably assumed to be imposed by this law, shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 1, Ch. 186, L. 1963; amd. Sec. 68, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the state board of equalization, except that in the second paragraph of subsection (b), it substituted references to the state tax appeal board

for references to the state board of equalization; deleted "shall reconsider its action, and if the taxpayer has so requested" following "If such appeal is made, the state tax appeal board" in the third sentence of the second paragraph of subsection (b) and deleted "in the event of an oral hearing" following "appeal and evidence presented" in the fourth sentence of the second paragraph of subsection (b).

84-1508.2. Periods of limitation—limitations for notification of additional tax extended if taxpayer fails to report change in federal tax—waiver. (1) Except as otherwise provided in this section and in section 84-1513, R. C. M. 1947, no deficiency shall be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within five (5) years from the date the return was filed. For the purposes of this section a return filed before the last day prescribed for filing shall be considered as filed on such last day. Where before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax shall not apply when

(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax, provided the suspension of the limitation set forth in this section shall last only so long as

(i) the suspension of the federal statute of limitation, or

(ii) until one (1) year after any federal changes have become final or any amended federal return is filed as a result of such suspension of the federal statute, whichever is the latest in time, or

(b) when a taxpayer has failed to file a report of changes in federal taxable income or an amended return as required by section 84-1517, R. C. M. 1947, until five (5) years after the federal changes become final or the amended federal return was filed, whichever the case may be.

(2) No refund or credit shall be allowed or paid with respect to the year for which a return is filed after five (5) years from the last day prescribed for filing the return or after one (1) year from the date of the overpayment, whichever period expires the later, unless before the expiration of such period the taxpayer files a claim therefor or the state department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) of this section to extend the time within which the state department of revenue may propose an additional assessment, the period within which a claim for refund or credit may be filed, or a credit or refund allowed in the event no claim is filed, shall automatically be so extended.

History: En. Sec. 2, Ch. 186, L. 1963; amd. Sec. 1, Ch. 142, L. 1969; amd. Sec. 61, Ch. 516, L. 1973; amd. Sec. 1, Ch. 101, L. 1974.

Amendments

The 1969 amendment substituted "in this section and in section 84-1513, R. C. M. 1947" for "in section 84-1513" in the first sentence of the section; substituted "such last day" for "that day" at the end of the second sentence; and added the provision designated as subdivision (1) (b).

The 1973 amendment substituted "department of revenue" for "board of equalization" twice in subsection (2).

The 1974 amendment inserted the provision designated as subdivision (1)(a) and inserted the subdivision designation (1)(b).

Effective Date

Section 2 of Ch. 101, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

84-1509. (2303.1) Consolidated returns—computation and procedure on. (1) Corporations which are affiliated may not file a consolidated return unless at least eighty per cent (80%) of all classes of stock of each corporation involved is owned directly or indirectly by one (1) or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and permission to file a consolidated return is given by the state department of revenue. For purposes of this section, a "unitary business operation" means one in which the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations.

(3) If the conditions of subsections (1) and (2) of this section are met, the state department of revenue may require corporations to file a consolidated return when the department considers a consolidated return necessary.

(4) Any corporation liable to report under this act and owning, or controlling, either directly or indirectly, at least eighty per cent (80%) of all classes of stock of each corporation involved, may be required to make a consolidated report showing the combined net income[,] such assets of the corporation as are required for the purposes of this act, and such other information as the state department of revenue may require, but excluding intercorporate stockholdings and intercorporate accounts. Any corporation liable to report under this act and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, such assets of the corporation as are required for the purposes of this act, and such other information as the state department of revenue may require, but excluding intercorporate stockholdings and intercorporate accounts. In case it shall appear to the state department of revenue that any arrangement exists in such a manner as to improperly reflect the business done, the segregable assets or the entire net income earned from business done in this state, the state department of revenue is authorized and empowered, in such manner as it may determine, to equitably adjust the tax.

History: En. Sec. 5, Ch. 166, L. 1933; amd. Sec. 1, Ch. 243, L. 1969; amd. Sec. 62, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted subsections (1) to (3) for former subsection (a) which provided that affiliated corporations make a consolidated return if authorized

and/or required by the state board of equalization; redesignated former subsection (b) as subsection (4) and inserted "at least eighty per cent * * * of each corporation involved" after "controlling, either directly or indirectly" in the first sentence.

The 1973 amendment substituted "department of revenue" for "board of equalization" in subsections (2), (3) and (4).

84-1511. (2303.3) Return and payment of tax by corporations, etc.

Sale of Assets in Liquidation

Directors and trustees in liquidation of a liquidated corporation were entitled to a refund of that portion of the corporate license tax paid upon the gain realized

by the corporation in the sale of its assets in liquidation. *Barth v. Montana State Board of Equalization*, 148 M 259, 419 P 2d 484, 485.

84-1512. (2303.4) Where omission deemed committed—certificate of department as evidence. The failure to do any act, required by or under the provisions of this act, shall be deemed an act committed in the office of the state department of revenue in the state capitol building, in Helena, Montana. The certificates of the state department of revenue to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this act, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

History: En. Sec. 8, Ch. 166, L. 1933; amd. Sec. 63, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment of revenue" for "board of equalization" near the end of the first sentence and near the beginning of the second sentence.

84-1514. (2303.6) Delinquency — suspension — forfeiture — dissolution. If a tax computed and levied hereunder is not paid or if a return is

not filed before five o'clock P. M. on the last day of the eleventh month after the date of delinquency the corporate powers, rights and privileges of the delinquent taxpayer, if it be a domestic corporation, shall be suspended, and if the delinquent taxpayer be a foreign corporation it shall thereupon forfeit its rights to do intrastate business in this state. Provided that, if any domestic corporation shall fail, for a period of five consecutive years, to either file a return or to pay the corporation license tax, the state department of revenue shall notify such corporation by mail addressed to the latest address on file in its office that such corporation will become dissolved if it fails to file all delinquent reports and pay all delinquent corporation license taxes within a period of sixty (60) days from and after the mailing of such notice, and, if such delinquent reports are not made and all delinquent corporation licenses are not paid before the expiration of said sixty (60) day period, the state department of revenue shall certify this fact to the secretary of state and upon receipt of such certificate, the said corporation shall be dissolved and the secretary of state shall indicate, by his records, such dissolution.

The state department of revenue shall transmit the name of each such corporation to the secretary of state, who shall immediately record the same in such manner that it may be available to the public. The suspension, forfeiture or dissolution herein provided for shall become effective immediately such record is made, and the certificate of the secretary of state shall be conclusive evidence of such suspension, forfeiture or dissolution.

History: En. Sec. 10, Ch. 166, L. 1933; amd. Sec. 1, Ch. 94, L. 1947; amd. Sec. 64, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment of revenue" for "board of equalization" near the beginning and end of the second sentence of the first paragraph and at the beginning of the second paragraph.

84-1515. (2303.7) Reviver of corporation after suspension or forfeiture.

Any corporation which has suffered the suspension or forfeiture referred to in the preceding section may be relieved therefrom upon making application therefor in writing supported by a certificate from the state department of revenue showing that the required return has been made and filed and/or that the tax and interest and penalties have been paid, for which the suspension or forfeiture occurred. Application for reviver may be made by any stockholder or creditor of the corporation or by a majority of the surviving trustees or directors, and the same shall be filed with the secretary of state, for which he shall receive a filing and recording fee of five dollars (\$5). In case the application is made more than one (1) year from the date the suspension or forfeiture occurred the applicant shall pay twice the amount of the tax and penalties due the state for the taxable year with respect to which the suspension or forfeiture occurred, and upon such payment the secretary of state shall issue a certificate of reviver for which he shall collect a fee of five dollars (\$5) and thereupon the applicant shall be revived. The reviver shall be without prejudice to any action, defense or right which has accrued by reason of the original suspension or forfeiture. The certificate of reviver shall be prima facie evidence of the reviver. Any certificate of reviver pro-

vided for in this section may be recorded in the office of the county recorder in any county of this state.

History: En. Sec. 11, Ch. 166, L. 1933; amd. Sec. 1, Ch. 49, L. 1947; amd. Sec. 15, Ch. 117, L. 1961; amd. Sec. 1, Ch. 52, L. 1967; amd. Sec. 65, Ch. 516, L. 1973.

Amendments

The 1967 amendment substituted "more than one (1) year from the date" for "in any taxable year other than the taxable year in which" after "application is made" and substituted "with respect to which" for "in which" after "for the taxable year," both in the third sentence.

The 1973 amendment substituted "department of revenue" for "board of equalization" in the middle of the first sentence.

Effective Date

Section 2 of Ch. 52, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 18, 1967.

Contract Made During Suspension

Statute providing that reviver shall be without prejudice to any action, defense or right which has accrued by reason of original suspension or forfeiture relates to right of corporation to do business rather than to nonenforceability of contract made by corporation while suspended. *Manufacturers Acceptance Corp. v. Krsul*, 151 M 28, 438 P 2d 667.

84-1516. (2303.8) Penalty for violation of act. Every officer or employee of any corporation or other person, who, without fraudulent intent, shall fail to make, render, sign or verify any return, or to supply any information within the time required by or under the provisions of this act, shall be liable to a penalty of not more than one hundred dollars (\$100) to be imposed, assessed, and collected by the state department of revenue in the same manner as is provided in this act with regard to delinquent taxes.

History: En. Sec. 12, Ch. 166, L. 1933; amd. Sec. 66, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1517. (2303.9) Failure to make return—estimate and investigation of net income—copy of federal return to be furnished on request—report of change in federal tax—copy of amended federal returns. (1) If any taxpayer fails to make return as herein required, the state department of revenue is authorized to make an estimate of the taxes due from such taxpayer from any information in its possession.

(2) The state department of revenue, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of net income of any corporations where information has been obtained, shall also have power to examine or to cause to have examined by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of any officer or employee of the corporation rendering such return or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for its information.

(3) Every corporation shall, upon request of the state department of revenue, furnish a copy of its federal income tax return and the computation schedule filed for such taxable year or years as the said department may specify in its request. If the amount of a corporation taxable income reported on its federal income tax return or the computation schedule

filed for any taxable year is changed or corrected by the United States internal revenue service or other competent authority, the corporation shall report such proposed change or correction to the state department of revenue within ninety (90) days after receiving official notice thereof. Any corporation filing an amended federal income tax return changing or correcting its taxable income for any taxable year shall also file an amended return with the state department of revenue within ninety (90) days thereafter.

History: En. Sec. 13, Ch. 166, L. 1933; amd. Sec. 2, Ch. 142, L. 1969; amd. Sec. 67, Ch. 516, L. 1973.

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

Amendments

The 1969 amendment redesignated subsections (a) and (b) as subsections (1) and (2); and added subsection (3).

Effective Date

Section 3 of Ch. 142, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

84-1518. (2303.10) Reciprocity with federal and other states' revenue officers regarding returns. The state department of revenue under such rules as they may prescribe, may permit, notwithstanding the provisions of this act as to secrecy, the commissioner of internal revenue of the United States, or the proper officer of any state imposing a tax on or according to income, to inspect the returns of any taxpayer making returns under this act, or may furnish to such officer or his authorized representative an abstract or any return or matter contained in any affidavit, statement or certificate made or filed in connection with any return or any tax or credit claimed as a deduction from any tax, or any information disclosed by the report of any investigation relating to the income or tax of any taxpayer; but such permission shall be granted or information furnished to such officer, or his representative, only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this act.

History: En. Sec. 14, Ch. 166, L. 1933; amd. Sec. 68, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

CHAPTER 16—LICENSE TAXES—ELECTRICAL ENERGY PRODUCERS

Section

- 84-1601. Electrical energy producers' license tax.
- 84-1602. Payment of tax—not to be set out on customers' bills.
- 84-1603. Disposition of revenue—interest on delinquency.
- 84-1604. Statement of producer—contents—time for filing.
- 84-1605. Producers' monthly statement of gross sales—inspection of books of producer.
- 84-1606. Exemptions.
- 84-1608. False statements constitute perjury.

84-1601. (2343.1) Electrical energy producers' license tax. That in addition to the license tax now provided by law, each and every individual, firm, partnership, common-law trust, corporation, association or other organization now engaged in the generation, manufacture or production of electricity, and electrical energy in the state of Montana, either through

water power or by any other means, for barter, sale or exchange and hereinafter referred to as the "producer," shall on or before the fifteenth day of each calendar month beginning with the fifteenth day of May, 1969, render a statement to the state department of revenue of the state of Montana, showing the gross amount of money received on account of sales of electricity and electrical energy during the preceding calendar month without any deduction, and shall pay a license tax thereon in the sum of one and four hundred thirty-eight thousandths per cent (1.438%) of such gross amount as shown on such statement in the manner and within the time hereinafter provided; and such tax shall be effective for the taxable year commencing April 1, 1969, and also for each taxable year thereafter.

History: En. Sec. 1, Ch. 51, Ex. L. 1933; amd. Sec. 1, Ch. 83, L. 1937; amd. Sec. 1, Ch. 214, L. 1957; amd. Sec. 1, Ch. 5, Ex. L. 1969; amd. Sec. 1, Ch. 391, L. 1971; amd. Sec. 69, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted "May, 1969" for "August, 1957" and added a proviso increasing the rate of tax from 1¼% to 1.438% for the two taxable years commencing on or after April 1, 1969.

The 1971 amendment made the 1.438%

rate permanent and added the clause following the final semicolon.

The 1973 amendment substituted "department of revenue" for "board of equalization" in the middle of the section.

Effective Date

Section 2 of Ch. 391, Laws 1971 read "This act is effective on April 1, 1971."

Cross-References

Multistate tax compact, sec. 84-6701.

84-1602. (2343.2) Payment of tax—not to be set out on customers' bills. Said license tax shall be remitted with the statement and paid on or before the fifteenth (15th) day of each month. No bill, statement or account rendered or given any customer by any organization affected by the provisions of this act shall set out or contain, as a separate item, any amount on account or by reason of, the license tax imposed by this act.

History: En. Sec. 2, Ch. 51, Ex. L. 1933; amd. Sec. 2, Ch. 5, Ex. L. 1969.

Effective Date

Section 3 of Ch. 5, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

Amendments

The 1969 amendment deleted "beginning with the fifteenth (15th) day of April, 1934" at the end of the first sentence.

84-1603. (2343.3) Disposition of revenue—interest on delinquency. The state department of revenue shall receipt therefor and promptly turn the same over to the state treasurer. Taxes not met on the due date shall become delinquent and shall bear interest from said due date at the rate of twelve per cent (12%) per annum.

History: En. Sec. 3, Ch. 51, Ex. L. 1933; amd. Sec. 20(F), Ch. 109, L. 1935; amd. Sec. 1, Ch. 83, L. 1937; amd. Sec. 6, Ch. 14, L. 1941; amd. Sec. 70, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

84-1604. (2343.4) Statement of producer—contents—time for filing. On or before the fifteenth (15) day of April, 1934, every producer referred to in section 84-1601, engaged in the production, generation or manufacture of electricity or electrical energy, shall make and file with the state department of revenue of the state of Montana, on forms prescribed by

the state department of revenue, an acknowledged and verified certificate which shall contain:

(a) to (f). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 51, Ex. L. 1933;
amd. Sec. 71, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" twice in the preliminary clause.

84-1605. (2343.5) Producers' monthly statement of gross sales—inspection of books of producer. That every such producer shall on or before the fifteenth (15) day of each calendar month, beginning with April 15, 1934, and monthly thereafter, render to the state department of revenue of the state of Montana on forms prescribed by the state department of revenue, a statement sworn to by the manager, president, secretary or treasurer, showing the gross proceeds received for or on account of, all sales of electricity and electrical energy for the preceding calendar month. The books and records of such producer shall be subject to inspection by the state department of revenue, its agents or employees, during reasonable hours.

History: En. Sec. 5, Ch. 51, Ex. L. 1933;
amd. Sec. 72, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-1606. (2343.6) Exemptions. All electricity and electrical energy used for pumping water for irrigation purposes to be used on lands in the state of Montana is exempt from the provisions of this act, except in cases where the water so pumped is sold or rented to such irrigated lands; provided, the exemption here given shall accrue to the benefit of the consumer of such electricity and electrical energy. Provided, further, that the full amount of such license tax which would have been due from such producers of electricity and electrical energy, if such exemption had not been made, shall be credited annually for the year in which the exemptions are made, on the power bill of the consumer, by the producer of such electricity and electrical energy, furnishing such power and such producer shall include a statement of the amount of electricity and electrical energy exempted by this section, furnished by it for the purpose of pumping water for irrigation purposes on lands in the state of Montana, to the state department of revenue as part of the statement required by section 84-1601, together with a statement of credits made on the power bills to the consumers of such electricity and electrical energy for the pumping of water for irrigation to be used on lands in the state of Montana.

History: En. Sec. 6, Ch. 51, Ex. L. 1933;
amd. Sec. 73, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1608. (2343.8) False statements constitute perjury. Any person, officer, partner, agent or representative of any producer referred to in section 84-1601, who shall make any false statement, affidavit, certificate, report or statement herein required to be made to the state department of

revenue, hereunder, shall be deemed guilty of perjury and upon conviction shall be punished by imprisonment in the state penitentiary for not less than one (1) nor more than fourteen (14) years.

History: En. Sec. 8, Ch. 51, Ex. L. 1933;
amd. Sec. 74, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the middle of the section.

CHAPTER 17—LICENSE TAXES—EXPRESS COMPANIES

Section

- 84-1702. Statements to be filed with state department of revenue.
- 84-1703. Gross receipts—how ascertained.
- 84-1704. Procedure in case of failure to make statement.
- 84-1705. Penalty for failure to make statement—duty of attorney general to institute action.
- 84-1706. State department of revenue authorized to require production of books.
- 84-1707. Amount and collection of license tax.

84-1702. (2306) Statements to be filed with state department of revenue. Any express company as defined in the preceding section, doing business in this state, shall annually, between the first and thirtieth day of April, after the approval of this act, under oath of the person constituting such company, if a person, or under oath of the president, treasurer, superintendent or chief officer in this state of such association or corporation, if an association or corporation, make and file with the state department of revenue, a statement in such form as the department may prescribe, containing the following facts:

First through Seventh. * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 87, L. 1917;
re-en. Sec. 2306, R. C. M. 1921; amd. Sec.
75, Ch. 516, L. 1973.

partment of revenue" for "board of equalization" near the end of the preliminary clause.

Amendments

The 1973 amendment substituted "de-

Cross-References

Multistate tax compact, sec. 84-6701.

84-1703. (2307) Gross receipts—how ascertained.—The state department of revenue shall proceed to ascertain and determine on or before the first Monday of August in each year the entire gross receipts of each of said express companies for business done within the state of Montana for the year next preceding the first day of April, and the amount so ascertained by the said board [department] shall be held and deemed to be the gross receipts of such express company for business done within the state of Montana for the year under consideration.

History: En. Sec. 3, Ch. 87, L. 1917;
re-en. Sec. 2307, R. C. M. 1921; amd. Sec.
76, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

84-1704. (2308) Procedure in case of failure to make statement. In case of failure or refusal of any express company to make the statement required by law or furnish the department any information required by it, the department shall inform itself as best it may on the matters necessary to be known in order to discharge its duty, and at any time before the gross receipts of any express company for business done within

the state are determined, any person, company or corporation interested shall have the right, on written application, to appear before the department and be heard on the matter of such determination. After the determination of the amount of the gross receipts of any express company for business done in the state and before the certification of such amount by the department, the department may, on the application of any person, company or corporation interested, or on its own motion, review and correct its findings in such manner as may seem to it to be just and proper.

History: En. Sec. 4, Ch. 87, L. 1917; re-en. Sec. 2308, R. C. M. 1921; amd. Sec. 69, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted refer-

ences to the state department of revenue for references to the state board of equalization; and deleted "after the meeting of the board and" following "in order to discharge its duty, and at any time" in the middle of the first sentence.

84-1705. (2309) Penalty for failure to make statement—duty of attorney general to institute action. In case any express company shall refuse, fail or neglect to make and file the statement or schedule as provided for in this act, such company shall be subject to a penalty of five hundred dollars and an additional penalty of one hundred dollars for each day's omission after the thirtieth day of April to file its statement, said penalty to be recovered by action in the name of the state and on collection paid into the state treasury to the credit of the general fund of the state. The attorney general, on request of the state department of revenue, shall institute such action against any such person or persons, joint-stock company or corporation so delinquent in any court of competent jurisdiction in this state.

History: En. Sec. 5, Ch. 87, L. 1917; re-en. Sec. 2309, R. C. M. 1921; amd. Sec. 77, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the second sentence.

84-1706. (2310) State department of revenue authorized to require production of books. The state department of revenue shall have power to require the president, secretary, treasurer, receiver, superintendent, managing agent or other officer or employee or agent of any express company engaged in an express company business to attend before the department and bring with him for inspection any books or papers of such company in his possession or under his control and to testify under oath on any matter relating to the organization or business of such express company. The director of revenue or his appointed agent is authorized and empowered to administer such oath. Any person who shall refuse to attend before the department when subpoenaed so to do, or shall refuse to bring with him and submit for the inspection of the board any books or papers in his possession, custody or control, or shall refuse to answer any questions put to him by the department affecting the organization or business of the express company under investigation shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than five hundred dollars nor less than one hundred dollars.

History: En. Sec. 6, Ch. 87, L. 1917; re-en. Sec. 2310, R. C. M. 1921; amd. Sec. 70, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the state department of revenue

for references to the state board of equalization; and substituted "The director of revenue or his appointed agent" for "Any

member of the board" at the beginning of the second sentence.

84-1707. (2311) Amount and collection of license tax. The state department of revenue shall, on the first Monday of August, annually, enter in a book provided for that purpose the amount of gross receipts of express companies doing business in this state for the year next preceding the first day of April, as determined by the provisions of this act. It shall be the duty of the state treasurer annually to collect from each such express company doing business in this state, a sum in the nature of a license tax to be computed by taking four per centum of the amount fixed by the state department of revenue as the gross receipts of such express company for business done within the state for the year next preceding the first day of April as determined and certified by the state department of revenue; provided, however, that nothing contained in this act shall exempt or relieve any express company from the assessment and taxation of its tangible property in the manner authorized and provided by law. All licenses collected under the provisions of this act shall be accredited to the general fund of the state.

History: En. Sec. 7, Ch. 87, L. 1917; amd. Sec. 1, Ch. 150, L. 1921; re-en. Sec. 2311, R. C. M. 1921; amd. Sec. 78, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

CHAPTER 18—LICENSE TAXES—GASOLINE DEALERS AND DISTRIBUTORS—SPECIAL FUEL TAX

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| <p>Section
84-1831.
84-1832.
84-1832.1.
84-1833.

84-1834.
84-1835.
84-1836.
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84-1841.
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84-1857.</p> | <p>Definitions.
Tax imposed.
Tax to be collected on diesel fuel and liquid petroleum gas, when.
Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits.
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Returns and payments.
Credits.
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Disposition of funds.
Allocation of funds—participation in railroad grade crossing protection on public highways, roads or streets, other than those designated on the interstate, primary or urban system.
Judicial review and appeals.
Special fuel user's temporary trip permits—agents by whom issued.
Fees for temporary permits—time of expiration—disposition of fees—forms.
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Short title.
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Gasoline license tax—amount.
Distributors' statements—payment of the tax.
Examination of records.
Records to be kept.
Inspection of records.
Invoice of distributors and aviation dealers.
Information reports.
Refund of gasoline license tax—procedure.
Unlawful use of aviation gasoline.
Timely mailing treated as timely filing and paying.
License and bond of gasoline distributors.</p> |
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- 84-1858. Penalties—delinquent payment—procedure in case of failure to file statement or pay tax—lien for tax.
 84-1859. Penalties.
 84-1860. Statute of limitations.
 84-1861. Rules and regulations to be established by state department.

84-1801, 84-1801.1, 84-1802, 84-1802.1, 84-1803, 84-1803.1, 84-1804, 84-1805, 84-1805.1, 84-1806 to 84-1811. (2381.11 to 2381.21) Repealed.

Repeal

Sections 84-1801, 84-1801.1, 84-1802, 84-1802.1, 84-1803, 84-1803.1, 84-1804, 84-1805, 84-1805.1, 84-1806 to 84-1811 (Secs. 1, 3 to 12, Ch. 19, L. 1927; Sec. 4, Ch. 92 L. 1929; Sec. 1, Ch. 175, L. 1929; Sec. 4, Ch. 6, L. 1931; Sec. 1, Ch. 170, L. 1933; Sec. 1, Ch. 116, L. 1935; Sec. 1, Ch. 63, L. 1943; Sec. 1, Ch. 202, L. 1949; Sec. 1, Ch. 52, L. 1951; Sec. 1, Ch. 217, L. 1953; Secs. 1, 2, Ch. 17, L. 1955; Sec. 1, Ch. 230, L. 1957; Sec. 1, Ch. 175, L. 1959; Secs. 1, 2, Ch. 64,

L. 1963; Secs. 2 to 6, Ch. 70, L. 1963; Sec. 214, Ch. 147, L. 1963; Sec. 1, Ch. 6, Ex. L. 1967; Sec. 1, Ch. 355, L. 1969), relating to the gasoline license tax, were repealed by Sec. 20, Ch. 369, Laws 1969.

Compiler's Notes

Section 1 of Ch. 355, Laws 1969 purported to amend section 84-1801.1 to increase the tax from six and one-half cents to seven cents for the period from July 1, 1969 to July 1, 1971.

84-1813. (2381.23) Repealed.

Repeal

Section 84-1813 (Sec. 2, Ch. 116, L. 1935; Sec. 1, Ch. 210, L. 1955; Sec. 1, Ch. 73, L. 1963), relating to collection of

tax on motor fuel, was repealed by Sec. 1, Ch. 60, L. 1969 and Sec. 20, Ch. 369, Laws 1969. The language of section 84-1813 was re-enacted as section 84-1832.1.

84-1814. (2381.24) Repealed.

Repeal

Section 84-1814 (Sec. 15, Ch. 19, L. 1927), relating to delinquency in payment

of the gasoline license tax as a misdemeanor, was repealed by Sec. 20, Ch. 369, Laws 1969.

84-1818, 84-1818.1, 84-1819 to 84-1823. (2396.4 to 2396.9) Repealed.

Repeal

Sections 84-1818, 84-1818.1, 84-1819 to 84-1823 (Secs. 1, 2, Ch. 17, L. 1927; Sec. 1, Ch. 168, L. 1929; Sec. 1, Ch. 175, L. 1931; Secs. 1 to 4, Ch. 157, L. 1933; Sec. 1, Ch. 96, L. 1937; Sec. 1, Ch. 67, L. 1939; Sec. 1, Ch. 130, L. 1947; Sec. 1, Ch. 168, L. 1949; Sec. 1, Ch. 198, L. 1949; Sec. 1, Ch. 221, L. 1953; Secs. 3, 4, Ch. 17,

L. 1955; Sec. 1, Ch. 212, L. 1955; Sec. 1, Ch. 17, L. 1963; Secs. 3, 4, Ch. 64, L. 1963; Sec. 1, Ch. 70, L. 1963; Sec. 6, Ch. 126, L. 1963; Sec. 221, Ch. 147, L. 1963; Sec. 1, Ch. 224, L. 1963; Sec. 2, Ch. 251, L. 1967), relating to gasoline tax refunds and to the licensing of gasoline dealers and distributors, were repealed by Sec. 20, Ch. 369, Laws 1969.

84-1828, 84-1829. Repealed.

Repeal

Sections 84-1828 and 84-1829 (Secs. 5, 6, Ch. 162, L. 1945), relating to the definition of terms and effect of the "Special Fuel

Tax Act" on the license tax upon diesel fuel, were repealed by Sec. 20, Ch. 369, Laws 1969.

84-1830. Title.

Cross-References

Multistate tax compact, sec. 84-6701.

84-1831. Definitions. As used in this act, the following definitions shall apply:

- (a). * * * [Same as parent volume.]
- (b) "Department" means the state department of revenue.

(c) to (h). * * * [Same as parent volume.]

(i) "Bond" means: (1) a bond duly executed by such special fuel dealer or special fuel user as principal with a corporate surety qualified under the laws of Montana, which bond shall be payable to the state of Montana conditioned upon faithful performance of all requirements of this act, including the payment of all taxes, penalties and other obligations of such special fuel dealer or special fuel user arising out of this act; or (2) a deposit with the state treasurer by the special fuel dealer or special fuel user under such terms and conditions as the department may prescribe of a like amount of lawful money of the United States or bonds or other obligations of the United States or the state of Montana or of any county thereof, of an actual market value not less than the amount so fixed by the board.

History: En. Sec. 2, Ch. 162, L. 1955; amd. Sec. 3, Ch. 247, L. 1959; amd. Sec. 1, Ch. 66, L. 1963; amd. Sec. 7, Ch. 70, L. 1963; amd. Sec. 12-106, Ch. 197, L. 1965; amd. Sec. 79, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted subdivision (b) for a subdivision defining "board"; and substituted "department" for "board" in subdivision (i).

84-1832. Tax imposed. There is hereby levied and imposed a tax on the use of each and every gallon of special fuel in any motor vehicle while operated upon the highways, equivalent to the lawful tax levied on motor fuel under section 84-1832.1. Said tax, with respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles in this state, shall attach at the time of such delivery and shall be collected by such special fuel dealer from the special fuel user and shall be paid over to the department as hereinafter provided. Said tax, with respect to special fuel acquired by any special fuel user in any manner other than by delivery by a special fuel dealer into a fuel supply tank of a motor vehicle, shall attach at the time of the consumption of such fuel in the propulsion of a motor vehicle upon the highways of the state and shall be paid over to the department by the special fuel user as hereinafter provided. The various counties, incorporated cities and towns and school districts of this state shall be exempt from the levy and imposition of this tax.

History: En. Sec. 3, Ch. 162, L. 1955; amd. Sec. 2, Ch. 66, L. 1963; amd. Sec. 3, Ch. 60, L. 1969; amd. Sec. 1, Ch. 12, L. 1971; amd. Sec. 1, Ch. 277, L. 1971; amd. Sec. 80, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted the reference to "section 84-1832.1" for a reference to repealed "section 84-1813."

Chapter 12, Laws of 1971, substituted a

reference to section 84-1847 for a reference to a section 84-1802 in a clause relating to liquid petroleum gases appearing at the end of the first sentence.

Chapter 277, Laws of 1971, deleted "or on liquid petroleum gases under section 84-1847" from the end of the first sentence.

The 1973 amendment substituted "department" for "board" near the end of the second and third sentences.

84-1832.1. Tax to be collected on diesel fuel and liquid petroleum gas, when. The state department of revenue shall, under the provisions of rules and regulations issued by the department, collect or cause to be collected from the owners or operators of motor vehicles a tax in an amount equal to nine cents (\$.09) for each gallon of diesel fuel or other volatile liquid, of less than forty-six degrees (46°) A.P.I. (American

Petroleum Institute) gravity test, and seven cents (\$.07) for each gallon of liquid petroleum gas when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the state of Montana, or used in motor vehicles, motorized equipment and the internal combustion of any and all engines including stationary engines used in connection with any and all work performed under any and all contracts pertaining to the construction, reconstruction or improvement of any highway or street and their appurtenances awarded by any and all public agencies, including federal, state, county, municipalities, or other political subdivisions.

History: En. 84-1832.1 by Sec. 2, Ch. 60, L. 1969; amd. Sec. 2, Ch. 277, L. 1971; amd. Sec. 81, Ch. 516, L. 1973.

tion 84-1832, R. C. M. 1947, to change the reference to section 84-1813 therein to 84-1832.1.

Title of Act

An act to repeal section 84-1813, R. C. M. 1947, and to re-enact its language as a new section for the purpose of removing the statute establishing a tax on diesel fuel from the gasoline license tax laws and its proper placement in the laws pertaining to special fuel taxes; and amending sec-

Amendments

The 1971 amendment inserted the clause imposing a tax of seven cents per gallon on liquid petroleum gas in the middle of the section.

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-1833. Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits. (a) Required: It shall be unlawful for any person to act as a special fuel dealer in this state unless such person is the holder of an uncanceled fuel dealers' license issued to him by the department.

Every special fuel user shall obtain from the department, prior to the use of such special fuel for the propulsion of a motor vehicle or vehicles in this state, a special fuel users' license, and a special fuel vehicle permit for each such vehicle or vehicles operated by him upon the highways as herein defined, which permit shall at all times be carried in the vehicle for which it was issued, and shall be exhibited for inspection on request of any checking station officer, Montana highway patrol officer, any authorized employee of the department of revenue, or any other law enforcement officer.

Any out of state user who operates a recreational passenger car, pickup truck or family motor coach powered by special fuels shall secure a special fuel user's "Courtesy" vehicle permit. The permit shall not be transferable and shall be valid for ninety (90) days. Permits will be issued at no cost to the user by the department of revenue, scale house personnel and gross vehicle weight patrol crews. The department may require the user who has fuel capacity in excess of thirty (30) gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(b) Application: Application for a special fuel dealer's license, a special fuel user's license, or a special fuel vehicle permit shall be made to the board unless otherwise provided herein.

(c) Form of application: The application shall be filed upon a form prepared and furnished by the department. The application shall contain such information as the department deems necessary.

(d) Bond: Except as herein provided, no special fuel dealer's license or special fuel user's license shall be issued to any person or continued in force unless such person has furnished bond, as defined in section 84-1831 (i) and in such form as the department may require to secure its compliance with this act, and the payment of any and all taxes, interest and penalties due and to become due hereunder. Upon application, the department may waive the bond requirement of any resident special fuel user who establishes to the reasonable satisfaction of the board that the tax as herein provided is not delinquent or that interest or penalties are not accrued under the provisions of this act.

The total amount of the bond or bonds required of any special fuel dealer or special fuel user shall be equivalent to twice his estimated monthly tax payments as hereinafter provided, determined in such manner as the department may deem proper; provided, however, that the total amount of the bond or bonds shall never be less than five thousand dollars (\$5,000) for any special fuel user awarded a contract in accordance with section 84-1832.1, nor less than five hundred dollars (\$500) for any other special fuel user; and not less than one thousand dollars (\$1,000) for a special fuel dealer.

(e) Issuance: Upon receipt of the application and bond in proper form, the department shall issue to the applicant a license to act as a special fuel dealer or special fuel user or a special fuel vehicle permit; provided, however, the department may refuse to issue a special fuel dealer's license, a special fuel user's license or a special fuel vehicle permit to any person: (1) who formerly held either type of license or permit which, prior to the time of filing application has been revoked for cause; or (2) who is not the real party in interest and where the license or permit of the real party in interest has been revoked for cause prior to the time of filing such application; or (3) upon other sufficient cause being shown. Before such refusal, the department shall grant the applicant a hearing and shall grant him at least ten (10) days' written notice of the time and place thereof.

(f) and (g). * * * [Same as parent volume.]

(h) Revocation, suspension, cancellation and surrender of license and permit: The department may revoke the license of any special fuel dealer or special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking such license or permit, the department shall notify the licensee or permittee of its intention so to do, by either certified or registered mail, addressed to his last known address shown in the files of the department, requiring him to appear before the department on a day and hour specified in such notice, not more than thirty (30) days nor less than ten (10) days from date of such notice, and show cause, if any he has, why the license or the permit, or each of them, should not be revoked; provided, however, that at any time prior to and pending such hearing the department may, in the exercise of reasonable discretion, suspend such license or permit.

Upon revocation by the department of any such license or permit, the holder thereof shall immediately surrender the same to the department for cancellation; and the holder of any such permit, having permanently

discontinued the use of any vehicle for which the permit was issued, for whatever reason, shall immediately surrender the same to the department for cancellation.

The department shall cancel any license to act as a special fuel dealer or a special fuel user or any special fuel vehicle permit immediately upon surrender thereof by the holder.

(i) Release of surety: Any surety on a bond furnished by a special fuel dealer or special fuel user as provided herein shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the thirty (30) day period. The department shall promptly upon receiving any such request, notify the special fuel dealer or special fuel user who furnished the bond, and unless the special fuel dealer or special fuel user shall, on or before the expiration of the thirty (30) day period, file a new bond, in accordance with the requirements of this section, or make a deposit in lieu thereof as provided in section 84-1831 (i), the department forthwith shall cancel the special fuel dealer's or special fuel user's license.

(j) Additional bond or deposit: The department may require a special fuel dealer or special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in section 84-1831 (i), if, in its opinion, the security of the surety bond theretofore filed by such special fuel dealer or special fuel user, or the market value of the properties deposited as security by such special fuel dealer or special fuel user, shall become impaired or inadequate; and upon failure of the special fuel dealer or special fuel user to give such new additional surety bond or to deposit additional securities within thirty (30) days after being requested so to do by the department, said department forthwith shall cancel his license.

(k) All special fuel taxes due from any dealer or user under the provisions of this act, together with all penalties and interest thereon shall be a lien upon any and all property of such dealer, user or other person upon the filing by the state department of revenue of a duplicate copy of the statement so made by the state department of revenue, or a certified copy of any statement filed by said department in the office of the county clerk of the county where such property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973.

Amendments

The 1969 amendment inserted the second sentence in subsection (d) and, in the sec-

ond paragraph of that subsection, substituted "five thousand dollars . . . any other special fuel user" for "five hundred dollars (\$500.00), for a special fuel user."

Chapter 12, Laws of 1971, substituted section "84-1832.1" for "84-1932.1" in the second paragraph of subsection (d), thus correcting the citation to a tax on certain special fuel users.

Chapter 277, Laws of 1971, added the

third paragraph to subsection (a); added "unless otherwise provided herein" at the end of subsection (b); inserted "Except as herein provided" at the beginning of the first paragraph of subsection (d); inserted "resident" before "special fuel user" in the second sentence of the first paragraph of subsection (d); substituted "the tax as herein provided is not delinquent or that interest or penalties are not accrued" for "no tax, interest or penalties are accrued" in the second sentence of the first paragraph of subsection (d); and made minor changes in punctuation and style.

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization throughout the section; and deleted "any member of the state board of equalization or" before "any authorized employee" near the end of the second paragraph of subsection (a).

Effective Date

Section 3 of Ch. 12, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 2, 1971.

84-1834. Special fuel dealers' and special fuel users' records. (a) Preparation of records and inspection of: Every special fuel dealer, special fuel user and every person importing, manufacturing, refining, dealing in, transporting or storing, special fuel in this state, shall keep such records, receipts and invoices and other pertinent papers, with respect thereto as the department may require, and shall produce them for the inspection of the department at any time during the business hours of the day.

(b). * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 162, L. 1955; amd. Sec. 2, Ch. 216, L. 1957; amd. Sec. 82, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" twice near the end of subsection (a).

84-1835. Returns and payments. (a) Returns: For the purpose of determining the amount of his liability for the tax herein imposed, each special fuel dealer and each special fuel user shall file with the department, on forms prescribed by said department, a monthly tax return.

Upon annual application the department shall waive the filing of a monthly tax return of any special fuel user who establishes that such user's monthly tax liability is or will be ten dollars (\$10) or less.

Such user shall make an annual report and return to the department, on forms prescribed by said department on or before the 25th day of January of each year hereafter. Should the department determine that a user filing annual returns as herein provided is delinquent in making reports and payments, it shall require such person to file monthly returns as herein provided. Such return, annual or monthly, shall contain a declaration by the person making the same, to the effect that the statements contained are true and are made under penalties of perjury, which declarations shall have the same force and effect as a verification. The return shall show such information as the department may reasonably require for the proper administration and enforcement of this act; provided, however, that if a special fuel dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle, and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the monthly return to the department need not include inventory control data covering bulk storage from which wholesale dis-

tribution of special fuel is made. The special fuel dealer or special fuel user shall file the return on or before the twenty-fifth (25th) day of the next succeeding calendar month following the monthly period to which it relates; provided, however, that for good cause the department may grant a taxpayer a reasonable extension of time for filing, but not to exceed thirty (30) days.

Any claim, statement, remittance, or other document which is transmitted to this state through the United States mail, shall be deemed filed and received by this state on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. Any claim, statement, remittance or other document which is mailed but not received by this state or where received with a cancellation mark that is illegible, erroneous, or omitted, shall be deemed filed and received on the date mailed if the sender establishes by competent evidence that the claim, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing. In cases of such nonreceipt of a claim, statement, remittance, or other document, the sender must file with the state a duplicate within thirty (30) days after written notification is given to the sender by the state of its nonreceipt of such claim, statement, remittance, or other document.

If any claim, statement, remittance or other document is sent by United States registered mail, certified mail or certificate of mailing, a record authenticated by the United States Post Office of such registration, certification or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance or other document was mailed to the addressee, and the date of registration, certification or certificate shall be deemed the postmarked date.

If the final filing date falls on a Saturday, Sunday or legal holiday, the next secular or business day shall be the final filing date. Such reports shall be considered filed or received on the date or as provided in this chapter.

(b) and (c). * * * [Same as parent volume.]

(d) Refusal or failure to file return or pay tax when due: In case of any special fuel dealer or special fuel user who refuses or fails to file a return required by this act within the time prescribed by subsection (a) of this section, there is hereby imposed a penalty of twenty-five dollars (\$25) or a sum equal to twenty-five per cent (25%) of the tax due, whichever is greater, together with interest at the rate of one per cent (1%) on the tax due, for each calendar month or fraction thereof during which such refusal or failure continues; provided, however, that if any such special fuel dealer or special fuel user shall establish to the satisfaction of the department that his failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this subsection.

(e). * * * [Same as parent volume.]

(f) Deficiency: If it be determined by the department that the tax reported by any special fuel dealer or special fuel user is deficient, it shall proceed to assess the deficiency on the basis of information available to it

and there shall be added to this deficiency interest at the rate of one per cent (1%) per month or fraction thereof from the date the return was due.

(g) Determination if no return made: If any special fuel dealer or special fuel user, whether or not he is licensed as such, fails, neglects, or refuses to file a special fuel tax return when due, the department shall, on the basis of information available, to it, determine the tax liability of the special fuel dealer or special fuel user for the period during which no return was filed, and to the tax as thus determined, the department shall add the penalty and interest provided in subsection (d) above.

An assessment made by the department pursuant to this subsection or to subsection (f) of this section shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

(h) Fraudulent return: If any special fuel dealer or special fuel user shall file a false or fraudulent return with intent to evade the tax imposed by this act, there shall be added to the amount of deficiency determined by the department a penalty equal to twenty-five per cent (25%) of the deficiency together with interest at one per cent (1%) per month, or fraction thereof, on such deficiency from the date such tax was due to the date of payment, in addition to all other penalties prescribed by law.

(i). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973.

Amendments

Chapter 52, Laws of 1969, substituted "twenty-five dollars (\$25)" for "one hundred dollars (\$100)" after "there is hereby imposed" in subsection (d).

Chapter 61, Laws of 1969, inserted in subsection (a) the language now appearing in the fourth and fifth paragraphs and a final paragraph reading: "Upon annual application the board may waive the filing of a monthly tax return of any special fuel user who establishes to the reasonable satisfaction of the board that no tax, interest or penalties are accrued under the provisions of this act."

The 1971 amendment inserted in subsection (a) the second paragraph and the first and second sentences of the third paragraph; inserted "annual or monthly"

after "such return" at the beginning of the third sentence of the third paragraph of subsection (a); deleted from subsection (a) the final paragraph added by Ch. 61, Laws of 1969; and made minor changes in punctuation and style.

The 1973 amendment substituted "department" for "board" throughout the section.

Repealing Clause

Section 5 of Ch. 277, Laws 1971 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 2 of Ch. 52, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 20, 1969.

Section 6 of Ch. 277, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 10, 1971.

84-1836. Credits. Any licensed special fuel user or licensed special fuel dealer who has paid a special fuel tax either directly or to the vendor from whom it was purchased, shall receive credit in the amount of any tax paid on special fuel exported for use outside of this state, or for any use off the public roads and highways of this state, or for any overpayment of special fuel taxes not due to the state. Special fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state.

Any licensed special fuel user who purchases a temporary special fuel permit, and thereafter applies for a special fuel vehicle permit for the same vehicle in less than eleven (11) days after the temporary permit is issued, shall receive credit in the amount of the temporary permit fee.

History: En. Sec. 7, Ch. 162, L. 1955; amd. Sec. 1, Ch. 104, L. 1967.

Amendments

The 1967 amendment substituted "licensed special fuel user or licensed special

fuel dealer" for "person" near the beginning of the first paragraph; added "or for any use * * * to the state" at the end of the first sentence of the first paragraph; and added the second paragraph.

84-1837. Procedures for credits. Should a licensed special fuel user or licensed special fuel dealer desire to receive refund of special fuel taxes or of the temporary permit fee, the user or dealer shall make a signed and written request to the department requesting those amounts then due. Any amount determined to be creditable by the department under section 84-1836 shall first be credited on any amounts then due and payable from the special fuel dealer or special fuel user to whom the refund is due, and the department shall then certify the balance to the credit of the dealer or user, and a warrant shall be drawn upon the state treasurer for the amount of such claim and same shall be paid in the same manner as other claims against the state are paid.

Provided however, in case any special fuel user or special fuel dealer fails or neglects to file a request for refund of special fuel taxes within twelve (12) months from the date his special fuel license became canceled, the department shall be under no obligation to make a refund.

History: En. Sec. 8, Ch. 162, L. 1955; amd. Sec. 2, Ch. 104, L. 1967; amd. Sec. 84, Ch. 516, L. 1973.

Amendments

The 1967 amendment inserted the first sentence of the first paragraph; added

"and a warrant shall be * * * claims against the state are paid" at the end of the first paragraph; and added the second paragraph.

The 1973 amendment substituted "department" for "board" in four places.

84-1838. Administration. (a) Rules and regulations: The department shall enforce the provisions of this act, and may prescribe, adopt and enforce reasonable rules and regulations relating to the administration and enforcement thereof.

(b) Examination of records: The department or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any special fuel dealer or special fuel user or any person dealing in, transporting, or storing special fuel as defined in this act and to investigate the character of the disposition which any person makes of such special fuel in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records and equipment are not maintained in this state at the time of demand, they shall be furnished to the department for review and shall be accompanied by the special fuel dealer or special fuel user or such dealer or user shall bear the reasonable cost of examination by an agent authorized or designated by the department at the place where such books or records are kept provided the taxpayer shall not be liable for such costs for a period exceeding one (1) week or for such longer period as he may

consent to in writing, unless the result of said examination is the payment of a tax deficiency.

(c). * * * [Same as parent volume.]

(d) Reciprocal exchange of data: The department shall, upon request from officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces of the Dominion of Canada, forward to such officials any information which it may have relative to the receipt, storage, delivery, sale, use or other disposition of special fuel by any special fuel dealer or special fuel user, provided such other state or states furnish like information to this state.

History: En. Sec. 9, Ch. 162, L. 1955; amd. Sec. 1, Ch. 106, L. 1967; amd. Sec. 85, Ch. 516, L. 1973.

be accompanied by the special fuel dealer or special fuel user" after "review" in the second sentence of subsection (b).

Amendments

The 1967 amendment inserted "and shall

The 1973 amendment substituted "department" for "board" throughout the section.

84-1840. Disposition of funds. All taxes, interest and penalties collected under this act shall be turned over promptly to the state treasurer and the state treasurer shall place the same in the earmarked revenue fund to the credit of the department of highways except those funds hereinbelow allocated to cities, towns and counties, which funds shall be paid by the state treasurer directly to such cities, towns and counties.

(1) Three million dollars (\$3,000,000) of the funds collected under this act shall be allocated each fiscal year to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance and repair of rural roads, and city or town streets and alleys, as provided in subsections (a) and (b) hereof,

(a) One million two hundred thousand dollars (\$1,200,000) shall be divided among the various counties in the following manner:

(i) Forty per centum (40%) in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system.

(ii) Forty per centum (40%) in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns.

(iii) Twenty per centum (20%) in the ratio that the land area of each county bears to the total land area of the state.

(b) One million eight hundred thousand dollars (\$1,800,000) shall be divided among the incorporated cities and towns in the following manner:

(i) Fifty per cent (50%) of the sum shall be divided in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana.

(ii) Fifty per cent (50%) shall be divided in the ratio that the city or town street and alley mileage, exclusive of the federal-aid

interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds hereby allocated to counties, cities and towns shall be used exclusively for the construction, reconstruction, maintenance and repair of rural roads, city or town streets and alleys, or for the share which such city, town or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets which are part of the federal-aid primary or secondary highway system, or urban extensions thereto.

(3) Upon receipt of the allocation provided herein, the governing bodies of the recipient counties, cities and towns, shall inform the department of highways of the purposes for which the funds shall be expended so that the county commissioners, the governing body and the department of highways may co-ordinate the expenditure of public funds for road improvements.

(4) All funds hereby allocated to counties, cities and towns shall be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases where the contract for construction, reconstruction and maintenance or repair is in excess of \$4,000.

(5) For the purposes of this act where distribution of funds is made on a basis related to population, the population shall be determined by the last preceding official federal census.

(6) For the purposes of this act where determination of mileage is necessary for distribution of funds it shall be the responsibility of the cities, towns and counties to furnish to the department of highways and state treasurer a yearly certified statement indicating the total mileage within their respective areas applicable to this act. All mileage submitted shall be subject to review and approval by the department of highways.

(7) None of the funds authorized by this section shall be used for the purchase of capital equipment.

History: En. Sec. 11, Ch. 162, L. 1955; amd. Sec. 213, Ch. 147, L. 1963; amd. Sec. 2, Ch. 6, Ex. L. 1967; amd. Sec. 2, Ch. 355, L. 1969; amd. Sec. 1, Ch. 384, L. 1971; amd. Sec. 1, Ch. 338, L. 1973; amd. Sec. 1, Ch. 331, L. 1974.

Amendments

The 1967 amendment added subdivisions (1) through (7).

The 1969 amendment substituted "The lesser of the following amounts" at the beginning of subdivision (1) for "One million five hundred thousand dollars (\$1,500,000)"; inserted "maintenance" after "reconstruction" in the first paragraph of subdivision (1); inserted at the end of the first paragraph of subdivision (1) clauses reading "(i) Three million dollars (\$3,000,000) or (ii) Sixty-six per cent (66%) of the amount of state matching funds saved under the provisions of clause B of section 120 (a) of Title 23, United States Code,

but not less than one million five hundred thousand dollars (\$1,500,000)"; inserted after clauses (i) and (ii) in subdivision (1) a paragraph reading "In any fiscal year when the amount of funds allocated to the counties and incorporated cities and towns under subsection (1) (ii) does not equal three million dollars (\$3,000,000) the difference between the three million dollars (\$3,000,000) and the funds allocated for that year shall carry forward and be allocated to the counties and incorporated cities and towns in subsequent fiscal years"; substituted "Forty per cent (40%)" at the beginning of subdivision (1)(a) for "Six hundred thousand dollars (\$600,000)"; substituted "Sixty per cent (60%)" at the beginning of subdivision (1)(b) for "Nine hundred thousand dollars (\$900,000)"; inserted "exclusive of the federal-aid interstate system and the federal-aid primary system" in two places in subdivision (1)(b)(ii); inserted "main-

tenance" after "reconstruction" in subdivisions (2) and (4); added "with the exception that five per cent (5%) of the funds allocated each fiscal year to any county, incorporated city and town or seven thousand five hundred dollars (\$7,500), whichever amount is greater, may be expended for maintenance of rural roads and city or town streets without being submitted to bid" to the end of subdivision (4); added subdivision (8); and made minor changes in phraseology.

The 1971 amendment added the proviso to subdivision (2); substituted the exception at the end of subdivision (4) for the language added by the 1969 amendment; and deleted from subdivision (8) a second sentence reading "Section 2(b), effective July 1, 1971, the total amount of funds allocated each fiscal year in section 2 (a)(1) to the counties and incorporated cities and towns shall reduce to one million five hundred thousand dollars (\$1,500,000)."

The 1973 amendment substituted "Three million dollars (\$3,000,000)" at the beginning of subdivision (1) for the language substituted there by the 1969 amendment; deleted the clauses (i) and (ii) and the paragraph inserted in subdivision (1) by the 1969 amendment; substituted "One million two hundred thousand dollars (\$1,200,000)" at the beginning of subdivision (1)(a) for "Forty per cent (40%)"; substituted "One million eight hundred thousand dollars (\$1,800,000)" at the beginning of subdivision (1)(b) for "Sixty per cent (60%)"; increased from 10% to 50% the portion of allocated funds expendable for maintenance and repairs authorized by the proviso to subdivision (2); and made minor changes in phraseology.

The 1974 amendment substituted "department of highways" for "state highway department" and added the exception at the end of the first sentence of the section; deleted the proviso added at the end of subsection (2) in 1971 which read: "provided that not more than fifty per cent (50%) or one thousand dollars (\$1,000), whichever amount is greater, of the funds allocated each fiscal year, beginning with the fiscal year starting July 1, 1971, to any county, incorporated city and town may be expended for maintenance and repair of rural roads of city or town streets"; rewrote subdivision (3) which read: "Upon receipt of the allocation provided herein, the county commissioners, in the case of counties, or the governing body, in the case of incorporated cities or towns, shall propose the expenditure of said funds to the state highway commission. The commission may consult with the county commissioners or the governing body proposing expenditures before approving the same provided, however, that before any contract for the ex-

penditure of funds provided herein shall be let, an agreement covering the same shall be executed by both the proposing body and the state highway commission"; rewrote subdivision (4) which read: "All construction, reconstruction, maintenance and repair authorized herein shall be pursuant to the design and subject to the supervision of the state highway commission, and all funds hereby allocated to counties, cities and towns shall be disbursed by the state highway commission to the lowest responsible bidder according to the bidding procedures specified in chapter 41, Title 32 of this code except that not more than seven thousand five hundred dollars (\$7,500) of the funds allocated each fiscal year to any county, incorporated city and town may be expended without being submitted to bids"; deleted subdivision (5) which read: "The state highway commission shall make and establish such rules and regulations as may be necessary to carry out the intent of the act and shall keep records of the funds allocated to each city or town, and the subsequent expenditure of said funds"; redesignated subdivisions (6), (7), and (8) as subdivisions (5), (6), and (7); substituted "furnish to the department of highways and state treasurer" for "furnish to the state highway commission" in the first sentence of subdivision (6); and substituted "department of highways" for "state highway commission" at the end of subdivision (6).

Repealing Clauses

Section 3 of Ch. 6, Ex. Laws 1967 repealed all acts and parts of acts in conflict therewith.

Section 3 of Ch. 355, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Section 3 of Ch. 384, Laws 1971 repealed all acts and parts of acts in conflict therewith.

Separability Clauses

Section 4 of Ch. 6, Ex. Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Section 4 of Ch. 355, Laws 1969 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Section 2 of Ch. 384, Laws 1971 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases, or parts be held unconstitutional or void, the

remainder of this act shall continue in full force and effect."

Allocation of Overhead Costs

City has general budgetary authority in financing construction of city shop complex and has implied power to allocate proportionate share of costs among the various city departments using the facility. *Greener v. City of Great Falls*, 157 M 376, 485 P 2d 932.

Funds from Sources other than Gasoline Tax

Prohibition against expenditure of gasoline tax revenues for nonhighway purposes has no application to street funds derived from other sources; thus proceeds of levy under another statute could be committed to finance proportionate share of construction costs of city shop complex to be used by various city departments. *Greener v. City of Great Falls*, 157 M 376, 485 P 2d 932.

84-1840.1. Allocation of funds—participation in railroad grade crossing protection on public highways, roads or streets, other than those designated on the interstate, primary or urban system. The sum of one hundred thousand dollars (\$100,000) may be allocated from the earmarked revenue fund, state highway account for the fiscal year ending June 30, 1973, and so much for each succeeding fiscal year as may be necessary to reimburse the fund for expenditures and commitments made and to maintain the fund at one hundred thousand dollars (\$100,000) at the beginning of each fiscal year thereafter, for participation by the department of highways with railroads in construction of railroad grade crossing protection on any public highway or road, except those designated on the interstate, primary or urban systems, within the state of Montana. The department of highways shall select those grade crossings in the state which in the opinion of the department are most in need of additional crossing protection and shall finance the cost thereof solely from this fund. Signal protection provided under the fund shall be limited to electric or automatic flashing lights or gates depending on the amount and nature of the hazards present at the crossing and participation in construction of such signals shall be on the same basis and under the same standards as are applicable and used in connection with protection of grade crossings on federal-aid roads within the state, provided, however, the fund shall not be used for protection of grade crossings on the secondary system where the protection is considered necessary and the cost thereof is financed in part with federal-aid highway funds. In addition to the funds allocated, counties and cities may authorize the use of funds available to said counties and cities under the provisions of section 84-1840 for participation of installation in grade crossing protection within the county or city.

History: En. 84-1840.1 by Sec. 1, Ch. 399, L. 1973.

Title of Act

An act to amend Title 84, chapter 18, R. C. M. 1947, by adding a new section designated 84-1010.1, R. C. M. 1947, allocating funds to be used by the department of highways for the participation with railroads for erection of railroad grade crossing protection on roads and streets except those on the interstate, primary or urban systems; providing for reimbursement of the fund at the beginning of each fiscal year; providing that the department of highways shall select the crossings to be protected and that participation be on the

same basis as applicable on federal-aid roads; authorizing counties and cities to use funds allocated to them from gasoline tax money for participation in grade crossing protection; repealing all acts and parts of acts in conflict herewith, provided, however, that sections 72-164 to 72-168, R. C. M. 1947, inclusive are not repealed; and providing that this act shall be effective on passage and approval.

Repealing Clause

Section 2 of Ch. 399, Laws 1973 read "All acts and parts of acts in conflict herewith are hereby repealed, provided, however, that sections 72-164 to 72-168 inclusive are not repealed."

Effective Date

Section 3 of Ch. 399, Laws 1973 provided the act should be in effect from and after

its passage and approval. Approved March 21, 1973.

84-1841. Judicial review and appeals. Any determination of the department hereunder may be reviewed by the district court of Lewis and Clark county, and an appeal may be taken from the judgment of said district court to the supreme court.

History: En. Sec. 12, Ch. 162, L. 1955; amd. Sec. 86, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board."

84-1842. Special fuel user's temporary trip permits—agents by whom issued. Any person operating a special fuel-powered vehicle upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by section 84-1833, shall be required to purchase a special fuel user's temporary trip permit. The permits will be issued by scale house personnel, gross vehicle weight (g.v.w.) patrol crews, Montana highway patrolmen, and such other enforcing agents as the department of revenue may prescribe by order, rule or regulation.

History: En. Sec. 1, Ch. 200, L. 1961; amd. Sec. 1, Ch. 105, L. 1967; amd. Sec. 87, Ch. 516, L. 1973.

a former first sentence which read "A temporary permit shall be issued to all unlicensed users of all special fuel vehicles operating within the state of Montana."

Amendments

The 1967 amendment substituted the present first sentence of the section for

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1843. Fees for temporary permits—time of expiration—disposition of fees—forms. The temporary special fuel permits shall cost the special fuel vehicle user a fee of twenty dollars (\$20.00); said permit shall be valid for a period of time not to exceed seventy-two (72) hours and will be automatically void should said vehicle leave the state of Montana during the seventy-two (72) hour period. All fees collected will be remitted to the state department of revenue. Special fuel temporary permits, remittance forms and any other necessary papers for the accounting and enforcement of this act shall be furnished by the state department of revenue.

History: En. Sec. 2, Ch. 200, L. 1961; amd. Sec. 88, Ch. 516, L. 1973.

partment of revenue" for "board of equalization" at the end of the second and third sentences.

Amendments

The 1973 amendment substituted "de-

84-1844. Penalty for operation without temporary permit—compliance bonds. Any unlicensed user of special fuel vehicles operating within the state of Montana, without making application for said temporary permit, and paying the specified fee, shall be guilty of committing a misdemeanor and upon conviction, be fined fifty dollars (\$50.00). Nothing contained herein shall affect the existing policy of accepting a compliance bond to be retained for use by the state department of revenue and to be imposed at the discretion of the enforcing agency.

History: En. Sec. 3, Ch. 200, L. 1961;
amd. Sec. 89, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1845. Short title. This act may be cited as the "Distributor's Gasoline License Tax Act."

History: En. Sec. 1, Ch. 369, L. 1969.

Title of Act

An act providing for the amount of the distributor's gasoline license tax; payment of the tax by distributors; establishing a refund procedure; licensing of gasoline

distributors; empowering the state board of equalization to establish regulations; providing for enforcement of the act by penalties; and repealing sections 84-1801 through 84-1814, 84-1818 through 84-1823, 84-1828, and 84-1829, R. C. M. 1947, relating to the gasoline dealer's license tax.

84-1846. Definitions. As used in this act, the following definitions shall apply:

(1) The term "gasoline" includes all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation gasoline and all flammable liquids, composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. The term "gasoline" does not include special fuels as defined in section 84-1831 (e).

(2) The word "person" means any person, firm, association, joint-stock company, syndicate or corporation.

(3) The words "motor vehicle" mean all vehicles operated or propelled upon the public highways or streets of this state, in whole or in part by the combustion of gasoline.

(4) The word "use" shall include and mean the operation of motor vehicles upon the public roads or highways of the state of Montana, or of any political subdivision thereof.

(5) The word "import" shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of Montana of any gasoline shipped or transported into this state from point of origin without this state, other than in the fuel supply tank of a motor vehicle.

(6) Gasoline deemed to be "distributed." (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks thereat, or gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks thereat, or gasoline imported into this state and placed in storage at refineries or pipeline terminals, shall be deemed to be distributed, for the purpose of this act, at the time the gasoline is withdrawn from such tanks, refinery or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from such tanks, refinery or terminal, such gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state other than that gasoline placed in storage at refineries or pipeline terminals, shall be deemed to be distributed after it has arrived in and is brought to rest in this state.

(7) The word "distributor" means

(a) any person who engages in the business in this state of producing, refining, manufacturing or compounding gasoline for sale, use or distribution,

(b) any person who imports gasoline for sale, use or distribution,

(c) any dealer licensed as of January 1, 1969, except a dealer at an established airport.

(8) The words "aviation gasoline" mean gasoline or any other liquid fuel by whatsoever name such liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(9) "Aviation dealer" means any person in this state engaged in the business of selling aviation gasoline either from a wholesale or retail outlet on which the license tax has been paid to a licensed distributor as herein provided for.

History: En. Sec. 2, Ch. 369, L. 1969; amd. Sec. 1, Ch. 13, L. 1971; amd. Sec. 1, Ch. 204, L. 1971.

changes made by both amendatory acts.

Amendments

Chapter 13, Laws of 1971, deleted from the end of paragraph (7)(b) a provision reading, "and no refund shall be allowed of that portion of the tax per gallon upon aviation gasoline allocated to the state aeronautics commission by section 1-501."

Chapter 204, Laws of 1971, added subdivision (9) and made minor changes in style.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 13 and once by Ch. 204. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the changes made by the two acts do not appear to conflict, the compiler has made a composite section embodying the

84-1847. Gasoline license tax—amount. Every distributor shall pay to the state department of revenue a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to one cent (1¢) for each gallon of aviation gasoline, which shall be allocated to the aeronautics commission as provided by section 1-501, R. C. M. 1947, as amended, and seven cents (7¢) for each gallon of all other gasoline distributed by him within the state and upon which the gasoline license tax has not been paid by any other distributor. Gasoline exported or sold for export out of the state of Montana shall not be included in the measure of the distributor's license tax.

History: En. Sec. 3, Ch. 369, L. 1969; amd. Sec. 1, Ch. 202, L. 1971; amd. Sec. 2, Ch. 204, L. 1971; amd. Sec. 90, Ch. 516, L. 1973.

tax from six and one-half cents to seven cents per gallon.

Chapter 204, Laws of 1971, included the change made by Ch. 202; reduced the tax on aviation gasoline to one cent; and inserted the clause providing for allocation to the aeronautics commission.

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 202 and once by Ch. 204. Both acts were approved by the governor on March 3, 1971. Chapter 204 incorporated the change made by Ch. 202 and the title to Ch. 204 referred to "the present seven cents." Therefore, the compiler has used the text of Ch. 204 above.

Amendments

Chapter 202, Laws of 1971 increased the

Effective Date

Section 2 of Ch. 202, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

84-1848. Repealed.**Repeal**

Section 84-1848 (Sec. 4, Ch. 369, L. 1969), relating to aviation gasoline tax

exemption certificates, was repealed by Sec. 3, Ch. 204, Laws 1971.

84-1849. Distributors' statements—payment of the tax. Each distributor shall, not later than the twenty-fifth day of each calendar month render a true statement to the state department of revenue, duly signed, of all gasoline distributed and received by him in this state during the preceding calendar month, and containing such other information as the state department of revenue may reasonably require in order to administer the gasoline license tax law. The statement shall be accompanied by a payment in an amount equal to the tax imposed by section 3 (84-1847) of this act, less any refund credit issued under section 11 (84-1855) of this act, and less two per cent (2%) of the first six cents (6¢) tax which shall be deducted by the distributor as an allowance for evaporation and other loss of gasoline distributed by such distributor; provided, however, that no such allowance shall be deducted from the one cent (1¢) tax on aviation gasoline.

Any distributor engaged in or carrying on his business at more than one (1) place or location in this state may include all such places of business in one (1) statement.

History: En. Sec. 5, Ch. 369, L. 1969; amd. Sec. 4, Ch. 204, L. 1971; amd. Sec. 91, Ch. 516, L. 1973.

Amendments

The 1971 amendment substituted the proviso at the end of the first paragraph for a separate sentence reading "In addition a distributor may deduct for each gallon of aviation gasoline sold by him

and for which he submits a valid gasoline tax exemption certificate, an amount equal to the tax per gallon except the portion thereof allocated to the state aeronautics commission by section 1-501"; and made minor changes in style.

The 1973 amendment substituted "department of revenue" for "board of equalization" near the middle and end of the first sentence of the first paragraph.

84-1850. Examination of records. The department, or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any gasoline distributor or any person dealing in, transporting, or storing gasoline as defined in this act and to investigate the character of the disposition which any person makes of such gasoline in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records and equipment are not maintained in this state at the time of demand they shall be furnished to the department for review or such dealer shall bear the reasonable cost of examination by an agent authorized or designated by the department at the place where such books or records are kept, provided the taxpayer shall not be liable for such costs for a period exceeding one (1) week or for such longer period as he may consent to in writing, unless the result of such examination is the payment of a tax deficiency.

History: En. Sec. 6, Ch. 369, L. 1969; amd. Sec. 92, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in three places.

84-1851. Records to be kept. Each distributor or any other person dealing in, transporting, receiving or storing gasoline shall keep for a

period not to exceed three (3) years such records, receipts and invoices and any other pertinent papers and information as the state department of revenue may require.

History: En. Sec. 7, Ch. 369, L. 1969; amd. Sec. 5, Ch. 204, L. 1971; amd. Sec. 93, Ch. 516, L. 1973.

other person dealing in, transporting, receiving or storing gasoline."

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

Amendments

The 1971 amendment inserted "or any

84-1852. Inspection of records. The records, receipts and invoices and any other pertinent papers supporting sales of every distributor or any person dealing in, transporting or storing gasoline shall be open and subject to inspection by the state department of revenue or any of its employees or assistants during business hours in order to ascertain the amount of license tax due.

History: En. Sec. 8, Ch. 369, L. 1969; amd. Sec. 94, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1853. Invoice of distributors and aviation dealers. Each distributor and aviation dealer in this state shall at the time of delivery, except where authorized by the department, issue to the purchaser an invoice in which shall be stated the number of gallons of gasoline covered by such invoice and such other information as the state department of revenue may require.

History: En. Sec. 9, Ch. 369, L. 1969; amd. Sec. 6, Ch. 204, L. 1971; amd. Sec. 95, Ch. 516, L. 1973.

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization near the middle and end of the section.

Amendments

The 1971 amendment inserted "and aviation dealer."

84-1854. Information reports. Any person receiving gasoline, including every common carrier, private carrier and contract carrier of property who shall haul, receive, transport, or ship any gasoline, from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state, shall submit to the department of revenue upon its request and within the time specified a statement showing the number of gallons of gasoline contained in each shipment in interstate commerce and the movement of such products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee and the date of delivery to the consignee.

In case of any person, except licensed distributors, who refuses or fails to file a statement as herein provided for, there is hereby imposed a penalty of twenty-five dollars (\$25) for each failure or refusal, provided, however, that if any person shall establish to the satisfaction of the department that his failure to file a statement as prescribed by the department was due to reasonable cause, the department shall waive the penalty.

History: En. Sec. 10, Ch. 369, L. 1969;
amd. Sec. 96, Ch. 516, L. 1973.

ences to the department of revenue for
references to the state board of equaliza-
tion in four places.

Amendments

The 1973 amendment substituted refer-

84-1855. Refund of gasoline license tax—procedure. (1) Any person who shall purchase and use any gasoline, on which the Montana gasoline license tax has been paid, for operating or propelling stationary gasoline engines, tractors used off the public highways and streets, motorboats, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state, shall be allowed a refund of the amount of tax paid directly or indirectly on the gasoline so used. Provided, that such refund or drawback should in no instance exceed the tax paid or to be paid, to the state of Montana [, and no refund shall be allowed of that portion of the tax per gallon upon aviation gasoline allocated to the board of aeronautics by section 1-501, R. C. M. 1947].

Any distributor paying the gasoline license tax to this state erroneously shall be allowed a credit or refund of the amount of tax so paid.

(2) The application for refund shall be a signed statement on a form furnished by the department, accompanied by the original invoice or invoices issued to the claimant at the time of purchase and delivery, showing the total amount of gasoline purchased, the total amount of gasoline on which a refund is claimed, and the amount of the tax claimed for refund. Such further information pertaining to such claim shall be furnished as required by the department, provided that gallons of gasoline used off the roadways, where not verifiable by records of actual use, may be estimated by the applicant according to the following schedule:

(a) on the first one thousand (1,000) gallons of gasoline purchased, or any part thereof, forty-five per cent (45%) of gasoline purchased.

(b) on the next one thousand (1,000) gallons of gasoline purchased, or any part thereof, sixty per cent (60%) of gasoline purchased.

(c) on the next one thousand (1,000) gallons of gasoline purchased, or any part thereof, sixty-five per cent (65%) of gasoline purchased.

(d) on any gasoline purchased in excess of three thousand (3,000) gallons, seventy per cent (70%) of gasoline purchased.

If any invoice is either lost or destroyed, the purchaser may support his claim for refund by submitting an affidavit relating the circumstances of such loss or destruction and by producing such other evidence as may be required by the department.

(3) Any applicant who does not elect to estimate the off-highway use of gasoline according to the schedule in subsection (2) shall maintain records as provided for in this subsection.

(a) Highway and off-highway use of gasoline from common storage. Gasoline purchased and delivered into bulk storage for use in motor vehicles on public roads and nonhighway use must be fully accounted for by detail withdrawal records to accurately show the manner in which used. Gasoline on hand, determined by actual measurement, shall be deducted from a claim and shall be reported as an opening inventory on the next claim. Credit for the inventory is allowed on the next claim if

filed within fourteen (14) months from the filing date of the claim which established the inventory.

(b) Highway and off-highway use of gasoline from separate storage. If separate storage tanks are maintained for highway use and off-highway use, the bulk purchase invoices shall be so marked by the dealer at the time of delivery. No further record is required, provided that no gasoline is withdrawn from the off-highway tank for licensed vehicles. Withdrawal of gasoline from the off-highway tank for licensed vehicles will invalidate this method of determining refundable gallonage.

(c) Use of gasoline from restricted use storage. Special storage facilities in the woods, or in farm fields, or for other uses for certain periods, must be identified and explained. If such storage is used entirely for off-highway purposes and is not used in licensed vehicles, no records will be required other than purchase invoices showing the delivery into such storage.

(d) Gasoline purchased for other than bulk storage. Fuel purchased in small containers for nonhighway use must be identified on the purchase invoice and no further record is required.

(e) Resellers. Service stations, bulk dealers and marinas must prepare a separate and complete invoice for each withdrawal of gasoline for own use upon which a refund is to be claimed.

(f) Proof of highway use. When no highway use of gasoline is deducted from the claim, the applicant must substantiate purchases of gasoline and miles traveled for licensed motor vehicles upon request of the department.

(g) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state license tax on the gasoline used to operate the vehicle on roads or property in private ownership, if such person has maintained the following records:

(i) the total number of highway miles operated by each licensed motor vehicle, including private passenger cars;

(ii) total gallons of gasoline used in each vehicle to include both refund and nonrefund use;

(iii) purchase invoices supporting all gasoline handled through bulk storage, as well as all fuels purchased at service stations or received from other sources. Highway use for each vehicle may be determined by actual measurement, or may be computed by dividing the average miles per gallon highway operation consumption rate into the number of highway miles operated.

(4) All applications for refunds shall be filed with the department of revenue within fourteen (14) months after the date on which the gasoline was purchased as shown by invoices or after the date on which the tax was erroneously paid. Provided, however, that a distributor may file a claim for refund of taxes erroneously paid within three (3) years after the date of such erroneous payment. The department shall have one hundred twenty (120) days after receiving the claim to approve or reject it. If approved, the department shall issue a credit in lieu of refund for the amount of the claim, if the claimant is a distributor. For all other

persons, a warrant shall be drawn upon the state treasurer for the amount of the claim.

(5) Should the department of revenue find that the statement contains errors which are not fraudulently inserted, it may correct the statement and approve it as corrected, or the department may require the claimant to file an amended statement. If the state department of revenue determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the department may reject such claim in full. If a claim is rejected, the department may suspend claimant's right to refund for a period not to exceed one (1) year.

(6) Any person, other than a licensed distributor, shall obtain a license from the state department of revenue prior to selling gasoline on which a refund may be claimed. The application for license shall contain the applicant's name, address, place or places of business in the state of Montana, and other information which may be required by the department. Licenses issued shall bear a license number and the date of issuance. The department shall keep a record of all licenses issued, canceled, or suspended. A nontransferable license shall be issued for three (3) years upon payment of a fee of three dollars (\$3). Licenses must be renewed and the fee paid every three (3) years from date of issuance.

Any person failing to comply with this subsection shall be subject to a fine of not less than twenty-five dollars (\$25) or more than two hundred dollars (\$200) or imprisonment in the county jail for a period not less than ten (10) days or more than sixty (60) days, or both fine and imprisonment.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973; amd. Sec. 1, Ch. 80, L. 1974.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 200 and once by Ch. 516. The changes made by Ch. 516 were included in the changes made by Ch. 200; therefore the compiler has set out the text of Ch. 200 above.

Amendments

Chapter 13, Laws of 1971, added at the end of the first paragraph of subsection (1) the language enclosed in brackets.

Chapter 204, Laws of 1971, deleted "airplanes or aircraft" from the first sentence of the first paragraph of subsection (1); and deleted from the end of the first paragraph of subsection (1) a clause reading "and no refund shall be allowed on any sale with respect to which an aviation gasoline tax exemption certificate has been issued."

Chapter 400, Laws of 1971, inserted "the total amount of gasoline purchased" in the first sentence of the third paragraph

of subsection (1); deleted "and the reason" following "gasoline on which a refund is claimed" in the first sentence of the third paragraph of subsection (1); added the proviso to the second sentence of the third paragraph of subsection (1); inserted the third and fourth sentences in the third paragraph of subsection (1); deleted from the third paragraph of subsection (1) a sentence reading: "Each separate delivery shall constitute a purchase"; extended the time for filing applications, as set forth in the first sentence of subsection (2) from 13 to 14 months after the date of purchase or tax payment; and made minor changes in phraseology and punctuation.

Chapter 200, Laws of 1973, substituted "board of aeronautics" for "state aeronautics commission" at the end of the first paragraph of subsection (1); divided former subsection (1) into subsections (1) and (2); substituted references to the department of revenue for references to the state board of equalization throughout the section; inserted "original" and "at the time of the purchase and delivery" in the first sentence of subsection (2); substituted the proviso and new subdivisions (a) through (d) for the end of the second sentence in subsection (2) and the third,

fourth and fifth sentences of that paragraph; inserted subsection (3); renumbered former subsection (2) as (4); inserted the third sentence in subsection (4); renumbered former subsection (3) as (5); deleted former subsections (4) and (5); and substituted "license" for "permit" throughout subsection (6).

Chapter 516, Laws of 1973, substituted references to the department of revenue for references to the state board of equalization throughout the section.

The 1974 amendment deleted from subdivision (4) a third sentence reading "Except in the case of a claim for refund of taxes erroneously paid by a distributor, no claimant may make more than one (1) application for refund during any calendar year"; and substituted the fifth and

sixth sentences of subdivision (6) for "Licenses shall be issued for the calendar year upon payment of a fee of one dollar (\$1) and must be renewed annually before the first day of January."

Effective Dates

Section 3 of Ch. 13, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 2, 1971.

Section 2 of Ch. 200, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 7, 1973.

Section 2 of Ch. 80, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 4, 1974.

DECISIONS UNDER FORMER LAW

Motorboat Fuel

Under prior law which did not provide for tax refund for gasoline used in motorboats, one who consumed gasoline in motorboat in off-highway use was not entitled to refund on basis of due process and equal

protection clauses of constitution, since dealer, rather than the consumer, is the taxpayer, and since consumer, as a boat user, was not proper party to represent all nonhighway users. *Harvey v. Blewett*, 151 M 427, 443 P 2d 902.

84-1855.1. Unlawful use of aviation gasoline. It shall be unlawful for any person to use aviation gasoline, or to sell such gasoline for use, in any motorized vehicle operated upon the public highways or streets of this state. Violation of this section shall be a misdemeanor subject to the penalties provided in section 84-1859, R. C. M. 1947.

History: En. Sec. 84-1855.1 by Sec. 8, Ch. 204, L. 1971.

Title of Act

An act providing simplified administrative procedures in the taxation of aviation gasoline for allocation to the aeronautics commission by subjecting such gasoline to a one cent (1¢) per gallon tax rather than the present seven cents (7¢) and by allowing no deduction, refund, or exemption from the tax; deleting aviation gasoline from those provisions of the gasoline license tax laws which provide evaporation

allowances and credit refunds; providing a definition of "aviation dealer"; providing a new section numbered 84-1855.1, R. C. M. 1947, imposing a penalty; amending sections 84-1846, 84-1847, 84-1849, 84-1851, 84-1853 and 84-1855, R. C. M. 1947; repealing section 84-1848, R. C. M. 1947, pertaining to aviation gasoline tax exemption certificates.

Repealing Clause

Section 3 of Ch. 204, Laws 1971 read "Section 84-1848, R. C. M. 1947, is hereby repealed in its entirety."

84-1856. Timely mailing treated as timely filing and paying. Any claim, statement, remittance, or other document which is transmitted to this state through the United States mail, shall be deemed filed and received by this state on the date shown by the post-office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. Any claim, statement, remittance, or other document which is mailed but not received by this state or where received with a cancellation mark that is illegible, erroneous, or omitted, shall be deemed filed and received on the date mailed if the sender establishes by competent evidence that the claim, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing. In cases of such nonreceipt of a claim, statement, remittance, or other document, the sender must file with the state a duplicate within thirty (30) days after written notification is

given to the sender by the state of its nonreceipt of such claim, statement, remittance, or other document.

If any claim, statement, remittance, or other document is sent by United States registered mail, certified mail or certificate of mailing, a record authenticated by the United States post office of such registration, certification or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance or other document was mailed to the addressee, and the date of registration, certification or certificate shall be deemed the postmarked date.

If the date for filing any claim, statement, remittance, or other document falls upon a Saturday, Sunday or legal holiday, the filing shall be considered timely if done on the next business day.

History: En. Sec. 12, Ch. 369, L. 1969.

84-1857. License and bond of gasoline distributors. All gasoline distributors prior to the commencement of doing business shall file an application for a license with the state department of revenue on forms prescribed and furnished by the department setting forth the information as may be requested by the department. Each distributor shall at the same time file a corporate surety bond or such collateral security or indemnity as may be deemed sufficient by the state department of revenue, but in no case more than twice the estimated amount of gasoline taxes the distributor will pay to this state each month. Upon approval of the application, the state department of revenue shall issue to the distributor a nonassignable license which shall continue in force until surrendered or canceled.

History: En. Sec. 13, Ch. 369, L. 1969;
amd. Sec. 98, Ch. 516, L. 1973.

ences to the department of revenue for references to the state board of equalization in four places.

Amendments

The 1973 amendment substituted refer-

84-1858. Penalties—delinquent payment—procedure in case of failure to file statement or pay tax—lien for tax. Any license tax not paid within the time provided shall be delinquent and a penalty of ten per cent (10%) shall be added to the tax and the tax shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid. Upon a showing of good cause by the distributor, the department may waive penalty.

If any distributor or other person subject to the payment of such license tax shall willfully fail, neglect, or refuse to make any statement required by this act, or shall willfully fail to make payment of such license tax within the time provided, the state department of revenue shall be authorized to revoke any license issued under this act. In addition, the department shall inform itself regarding the matters required to be in such statement and determine the amount of the license tax due the state from such distributor, and shall add thereto a penalty of twenty-five dollars (\$25) or ten per cent (10%) thereof, whichever is greater, together with interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid.

The state treasurer shall proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect such license tax. All license taxes, penalties and interest due from any distributor under the provisions of this act, shall be a lien upon any and all property of such distributor or other person upon the filing by the state department of revenue of a copy of its statement, or a certified copy of any statement filed with the department, in the office of the county clerk of the county where the distributor's property is situated. The lien shall have precedence over any other claim, lien or demand filed or recorded thereafter. The lien may be enforced in the name of this state in the same manner as judgment liens are enforced. No action shall be maintained to enjoin the collection of all or any part of the license tax. When the amount due is paid in full before the entry of foreclosure decree, the state treasurer shall release the lien by filing in the office of the county clerk where the lien was filed, a written release. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of the lien a part of the distributor's property to enable the distributor to mortgage, sell or otherwise dispose of it in order to procure funds to pay taxes, penalty and interest, provided there remains, in the judgment of the state treasurer, sufficient property subject to the lien to ensure the payment of all the unpaid taxes, penalty and interest.

History: En. Sec. 14, Ch. 369, L. 1969; amd. Sec. 99, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted refer-

ences to the department of revenue for references to the state board of equalization near the end of the first paragraph and four times in the second paragraph.

84-1859. Penalties. Any distributor or other person, who fails, neglects, or refuses to make and file the statements required by this act in the manner or within the time provided, or who shall be delinquent in the payment of any license tax imposed by this act, or who shall make any false statement with reference to his business, or who shall make any false statement on any claim for refund or who violates any provision of the act, shall, in addition to any other penalties imposed, be deemed guilty of a misdemeanor and upon conviction shall be fined in any amount not exceeding one thousand dollars (\$1,000) or imprisonment in the county jail for not to exceed six (6) months, or shall be punished by the imposition of both such fine and imprisonment.

History: En. Sec. 15, Ch. 369, L. 1969.

84-1860. Statute of limitations. Except in the case of a fraudulent return or of neglect, or refusal to make a return, every deficiency shall be assessed within three (3) years from the due date of the return or the date of filing the return, whichever period expires later.

History: En. Sec. 16, Ch. 369, L. 1969.

84-1861. Rules and regulations to be established by state department. The state department of revenue shall have the power, and it shall be its

duty to adopt, publish and enforce the rules and regulations consistent with and necessary for carrying out the provisions of this act.

History: En. Sec. 17, Ch. 369, L. 1969; amd. Sec. 100, Ch. 516, L. 1973.

sion shall not affect the validity or meaning of any other portion of this act."

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

Repealing Clauses

Section 19 of Ch. 369, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 18 of Ch. 369, Laws 1969 read "If any section, subsection, sentence or clause in the act shall, for any reason, be held unconstitutional or void, such deci-

Section 20 of Ch. 369, Laws 1969 read "Sections 84-1801, 84-1801.1, 84-1802, 84-1802.1, 84-1803, 84-1803.1, 84-1804, 84-1805, 84-1805.1, 84-1806, 84-1807, 84-1808, 84-1809, 84-1810, 84-1811, 84-1813, 84-1814, 84-1818, 84-1818.1, 84-1819, 84-1820, 84-1821, 84-1822, 84-1823, 84-1828, and 84-1829, R. C. M. 1947, are repealed."

CHAPTER 19—LICENSE AND OTHER TAX PROCEEDS—HOW DISPOSED OF

Section

84-1901. Disposition of moneys from certain designated license and other taxes.

84-1901. Disposition of moneys from certain designated license and other taxes. The state treasurer shall deposit to the credit of the state general fund all moneys received by him from the collection of automobile drivers' license fees under section 1741.11, electric energy producers' license taxes under sections 84-1601 to 84-1609, inclusive, metalliferous mines license taxes under sections 84-2001 to 84-2015, inclusive, telegraph license taxes under sections 84-2501 to 84-2508, inclusive, oil producers' license taxes under sections 84-2201 to 84-2211, inclusive, natural gas distributors' license taxes under sections 84-2101 to 84-2110, inclusive, liquor license taxes under chapter 4 of Title 4, telephone license taxes under sections 84-2601 to 84-2608, inclusive, inheritance and estate taxes under sections 91-4401 to 91-4459, inclusive, and seventy per centum (70%) of all moneys received from the collection of income taxes under sections 84-4901 to 84-4935, inclusive, and corporation license taxes under sections 84-1501 to 84-1519, inclusive, subject to the prior pledge and appropriation of such income tax and corporation license tax collections for the payment of long-range building program bonds. The remaining twenty-five per centum (25%) of the proceeds of the corporation license tax and income tax shall be deposited to the credit of the earmarked revenue fund for state equalization aid to the public schools of Montana; and the state treasurer shall also deposit to the credit of the state general fund all moneys received by him from the collection of license taxes, fees and from all other sources under the operation of the Montana Beer Act, and being sections 4-301 to 4-356, inclusive, and all net revenues and receipts received by him from and under the operation of the State Liquor Control Act, being sections 4-101 to 4-237, inclusive.

History: En. Sec. 1, Ch. 14, L. 1941; amd. Sec. 51, Ch. 147, L. 1963; amd. Sec. 6, Ch. 276, L. 1965; amd. Sec. 51, Ch. 100, L. 1973.

to comply with the provisions of section 1a of article XII of the constitution of the state of Montana" after "aid to the public schools of Montana" in the second sentence; and corrected an erroneous section number.

Amendments

The 1973 amendment deleted "in order

CHAPTER 20—LICENSE TAXES—METALLIFEROUS MINES

Section

- 84-2003. Gross value of products, how determined.
- 84-2004. Amount of tax.
- 84-2005. Statement of gross value of product.
- 84-2006. Computation and notice of tax.
- 84-2008. Procedure in case of failure to file statement.
- 84-2009. False or erroneous statements—investigation concerning.
- 84-2010. Hearing on determination of value of gross product or amount of tax.
- 84-2011. Lien of tax.
- 84-2012. License.
- 84-2013. Commencing business.
- 84-2016. Dissolved corporations to make returns on operation of mines and pay metals mines tax due.

84-2002. (2344.2) Persons liable to pay license tax.

Cross-References

Multistate tax compact, sec. 84-6701.

84-2003. (2344.3) Gross value of products, how determined. The total "gross value of product" as used in this act, shall mean the market value of all merchantable metals, precious and semiprecious gems and stones extracted or produced, each year from any mine or mining property in the state of Montana or recovered from the smelting, milling, reduction, or treatment in any manner of ores extracted from any such mine or mining property or from tailings resulting from the smelting, reduction or treatment of any such ores. That whenever the ores require smelting, reduction, or treatment to ascertain the metal contents of such ores, the gross value of the product thereof shall be determined by taking the market value of all merchantable metals or mineral products extracted or recovered thereby, as shown by the gross smelter returns of such metals or mineral product in dollars and cents, without any deductions for costs of smelting, reduction or treatment, or otherwise, based upon the average quotations of the price of such metals, or mineral products, in the city of New York, as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York City, or other standard publications, giving the market reports during the calendar year immediately preceding. Should there be no quotation covering any particular product, then the state department of revenue shall fix the value of such gross product, or such portion thereof, in such a manner as may seem equitable.

History: En. Sec. 3, Initiative No. 28, 1925; amd. Sec. 101, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the last sentence.

84-2004. (2344.4) Amount of tax. The annual license tax to be paid by such person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semiprecious gems or stones are produced, shall be for the production years commencing on or after January 1, 1970 and for each production year thereafter, one dollar (\$1), together with an additional sum or amount computed on the gross

value of product which may have been derived by such person from such business, work or operation within this state during the calendar year immediately preceding, at the following rates: the rate of tax shall be fifteen hundredths of one per cent (0.15 of 1%) of the first one hundred thousand dollars (\$100,000) of the gross value of the product, five hundred seventy-five thousandths of one per cent (0.575 of 1%) of the amount by which such gross value of product exceeds one hundred thousand dollars (\$100,000) and does not exceed two hundred and fifty thousand dollars (\$250,000); eighty-six hundredths of one per cent (0.86 of 1%) of the amount by which such gross value of product exceeds two hundred and fifty thousand dollars (\$250,000) and does not exceed four hundred thousand dollars (\$400,000); one and fifteen hundredths per cent (1.15%) of the amount by which the gross value of product exceeds four hundred thousand dollars (\$400,000) and does not exceed five hundred thousand dollars (\$500,000) and one and four hundred thirty-eight thousandths per cent (1.438%) of the amount by which the gross value of product exceeds five hundred thousand dollars (\$500,000).

History: En. Sec. 4, Initiative No. 28, 1925; amd. Sec. 1, Ch. 220, L. 1957; amd. Sec. 1, Ch. 176, L. 1959; amd. Sec. 1, Ch. 9, Ex. L. 1969; amd. Sec. 1, Ch. 392, L. 1971.

Amendments

The 1969 amendment added a proviso, applicable only to production years 1969 and 1970, which imposed a new tax of .15% on the first \$100,000 of production and increased the rates from .5% to .575% on production between \$100,000 and \$250,000, from .75% to .86% on production between \$250,000 and \$400,000, from 1% to 1.15% on production from \$400,000 to \$500,000, and from 1.25% to 1.438% on production over \$500,000.

The 1971 amendment made the 1969 rates permanent by inserting "for the production years commencing on or after January 1, 1970 and for each production year thereafter," by substituting the 1969 rates in the main portion of the section, and by deleting the proviso added by the 1969 amendment.

Effective Dates

Section 2 of Ch. 9, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

Section 2 of Ch. 392, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

84-2005. (2344.5) Statement of gross value of product. Every person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semiprecious gems or stones are produced, must, not later than the fifteenth day of April, in such year when engaged in or carrying on any such business, work or operation, make out a statement of the gross value of product from all mines and mining properties worked or operated by such person during the calendar year immediately preceding. Such statement shall be in the form prescribed by the state department of revenue, and must be verified by the oath of such person, or the manager, superintendent, agent, president or vice-president of the corporation, joint stock or other company or syndicate and must be delivered to the state department of revenue not later than the fifteenth day of April. Such statement shall show the following:

1 to 3. * * * [Same as parent volume.]

4. The name and location of the smelter, mill or reduction works to which such ore has been shipped or sold during the period covered by

the statement and such other information as the state department of revenue may require.

5 and 6. * * * [Same as parent volume.]

History: En. Sec. 5, Initiative No. 28, 1925; amd. Sec. 102, Ch. 516, L. 1973.

partment of revenue" for "board of equalization" twice in the preliminary clause and once near the end of subdivision 4.

Amendments

The 1973 amendment substituted "de-

84-2006. (2344.6) Computation and notice of tax. The state department of revenue shall examine each such statement and return filed and determine and ascertain therefrom, and compute and assess the amount of the license tax to be paid by the person making and filing the same, and shall, not later than the first day of June, certify to the state treasurer the name of each person subject to the payment of license taxes under the provisions of this act, the amount thereof to be paid by such person. The said department shall at the same time mail to each person making and filing such statement and return, a written notice of the amount of the license tax to be paid by each, respectively, that the same is due and payable to the state treasurer, and that it will become delinquent at five o'clock p.m. on the thirtieth day of June, immediately following, and that if the same becomes delinquent a penalty of ten per centum will be added thereto, and that the whole amount of such license tax, with penalty added, will bear interest at the rate of twelve per centum per annum from the date the same becomes delinquent until paid. If any such person, has sold or otherwise disposed of any of its mine's products at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state department of revenue shall compute the gross value of such portion of said mine's product, so sold or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City, at the time such portion of the product was so sold or otherwise disposed of as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York, or some other standard publication, giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state department of revenue shall fix the value of such gross product, or such portion thereof, as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

History: En. Sec. 6, Initiative No. 28, 1925; amd. Sec. 1, Ch. 165, L. 1959; amd. Sec. 103, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in four places.

84-2008. (2344.8) Procedure in case of failure to file statement. If any person shall fail, refuse or neglect to make and file such statement and return within the time prescribed, the state department of revenue, shall, immediately after such time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with any

state or county officer or board under any law of this state, and from any other information which the department may be able to obtain, the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the license tax is to be paid, and license issued, and shall make and file a statement showing the amount of such gross value of product and shall ascertain and determine and compute and assess the amount of the license taxes due from, and to be paid by such person, and shall immediately certify the same to the state treasurer, and give notice to such person in the same manner as though such statement had been filed within time, and the state shall proceed to collect such license tax, adding thereto and collecting therewith, if the same is delinquent, the same penalty and interest as provided for herein for other delinquencies.

History: En. Sec. 8, Initiative No. 28, 1925; amd. Sec. 104, Ch. 516, L. 1973.

ences to the department of revenue for references to the state board of equalization in two places.

Amendments

The 1973 amendment substituted refer-

84-2009. (2344.9) False or erroneous statements—investigation concerning. (1) Should the state director of the department of revenue have reason to believe that any statement and return is false, or erroneous in any particular, it may require the person, or if made by a corporation, association or company, the officers thereof, and the employees of any such person, corporation, association or company, to appear before the director of revenue or his agent and testify concerning the same and any statement contained therein, and may examine all books, records, papers and documents of such person pertaining to such business, upon giving five days' written notice to such persons, or officers or employees thereof having custody of such books, records, papers and documents, and any person failing, refusing or neglecting to so appear, or refusing to be sworn or to testify, or refusing to answer any material question propounded by the director or any of his employees, or refusing to permit the director, or his employees to examine such books, records, papers or documents, or any thereof, pertaining to such business, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment. If the director, after hearing such evidence and after such examination of the books, papers, documents and records of such person, shall find and determine that such statement and return is erroneous or false in any material matter, the director shall change and correct the same so as to show the true gross value of product and shall reassess the amount of the license tax due from such person, and may add thereto a penalty of not exceeding fifty per centum, and shall thereupon immediately certify the amount of such license tax with the penalty added thereto to the state treasurer, and shall at the same time mail to such person a written notice of the corrections and changes made in such statement and return and the amount of the license tax and penalty certified to the state treasurer.

(2) The state treasurer shall collect such license tax with penalty added, and if the same has become delinquent he shall also collect interest thereon from the date of delinquency until paid at the rate of twelve per centum per annum. Provided further, that in order to verify such statement and return the state department of revenue may require any person, corporation, association, or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced from any mine or mining property in the state of Montana to appear before the director of revenue and testify concerning the gross mineral content of any such ore, or at the request of said director to furnish sworn statements showing the gross yield of such ores, mineral products or deposits in constituents of commercial value, that is to say, the number of ounces of gold, silver, pounds of copper, lead or zinc, or other commercially valuable constituents of said ores or mineral products or deposits, measured by standard units of measurement during the period covered by such statement, without any deductions whatsoever for smelting, milling, reduction or treatment of such ores or mineral product.

(3) The books, records, papers and documents of such person, corporation, association or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana shall be open to inspection and examination by the director of revenue or his employees at any time or place that the director may designate.

(4) If any person required by this act to make or file any statement, or to verify, under oath any statement, shall make such statement false in any material respect, or shall verify, under oath, any statement false in any respect or shall fail, neglect or refuse to file any statement required by said state department of revenue or shall refuse to appear before the director of revenue to testify concerning the gross mineral content of any such ore, or shall refuse to allow the director or his employees at any time or place to inspect or examine the books, records, papers and documents of such person, corporation, association or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 9, Initiative No. 28, 1925; amd. Sec. 72, Ch. 405, L. 1973.

ences to the department of revenue, the director, and his agents and employees for references to the state board of equalization.

Amendments

The 1973 amendment substituted refer-

84-2010. (2344.10) Hearing on determination of value of gross product or amount of tax. Every person whose license tax has been determined and assessed by the state department of revenue under any of the provisions of this act, who shall feel aggrieved by the determination and assessment of the department as to the amount of gross value of product, or as to the amount of the license tax, may, at any time within ten days

after the date of notice thereof, required to be given to such person, file with the state tax appeal board a petition for a hearing in which petition must be stated and set forth particularly and specifically the grounds and reasons therefor, and the manner in which the amount of the gross value of product or the amount of the license tax, or both, should be changed or corrected. Upon the filing of such petition, if it appears to the satisfaction of the state tax appeal board therefrom that the department of revenue has erred in any manner in ascertaining and determining the amount of the gross value of product, or the amount of the license tax, or both, the board shall immediately correct such error, or errors, and if such correction shall be in conformity with the request contained in the petition for a hearing the board shall take no further steps in connection with such petition, other than to certify to the state treasurer the amount of the license tax due from such person after the making of such correction, and notifying such person thereof. If, from such examination, it does not appear to the satisfaction of the state tax appeal board that the department of revenue has erred in any manner the board shall grant the hearing, fix a day when the board will take up and hear such matter, and give notice to such person of such date of hearing as the board may deem reasonable. On such hearing such person, any taxpayer interested, and the department of revenue may introduce witnesses and present testimony on any material matters connected with such return and license tax, and after considering such evidence the board shall fix and determine the gross value of product, and reassess the amount of the license tax to be paid by such person, and give notice thereof in the manner required by section 84-2006.

History: En. Sec. 10, Initiative No. 28, 1925; amd. Sec. 73, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the state department of revenue

and to the state tax appeal board for references to the state board of equalization; substituted "hearing" for "rehearing" in the middle of the first sentence; and substituted "present testimony" for "take testimony" in the final sentence.

84-2011. (2344.11) Lien of tax. The license tax assessed against any person under this act, together with all penalties and interest thereon, shall be a lien upon any and all property owned by such person within this state and used by such person in connection with such business, which lien shall attach to such property on the date when the license tax is certified to the state treasurer by the state department of revenue and such lien may be enforced in the name of the state of Montana, in the same manner as other liens are enforced at law.

History: En. Sec. 11, Initiative No. 28, 1925; amd. Sec. 105, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-2012. (2344.12) License. Whenever any license tax is paid under the provisions of this act the state department of revenue shall issue to the person paying the same a license authorizing such person to engage in and carry on such business until the first day of January immediately following the year for which such license tax is paid and such license issued.

History: En. Sec. 12, Initiative No. 28, 1925; amd. Sec. 7, Ch. 14, L. 1941; amd. Sec. 106, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-2013. (2344.13) Commencing business. If any person shall, after the first day of January of any year, engage in or commence the carrying on of the business of working or operating a mine or mining property in this state, from which any merchantable metal, precious, and semiprecious gems and stones are extracted and produced, such person, must, within sixty days after so engaging in or commencing to carry on such business, notify both the state department of revenue and the state treasurer of such fact.

History: En. Sec. 13, Initiative No. 28, 1925; amd. Sec. 107, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-2016. Dissolved corporations to make returns on operation of mines and pay metals mines tax due. Every corporation which shall be dissolved or cease to do business in this state during any taxpaying year shall make all statements, reports and returns required by law to be made with reference to the carrying on of the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semiprecious gems or stones, are produced and pay the tax due for such period as it carried on such business, on or before the date of such dissolution or cessation of business. The state department of revenue may grant a reasonable extension of time for filing returns upon good cause shown therefor.

History: En. Sec. 1, Ch. 11, L. 1941; amd. Sec. 108, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the final sentence.

CHAPTER 21—LICENSE TAXES—NATURAL GAS DISTRIBUTORS

Section

- 84-2102. Natural gas distributors' license tax—amount—standard for measurement of gas distributed—persons not contemplated by act.
- 84-2104. Certificate to be filed with department—time for filing—contents of certificate.
- 84-2105. Records to be kept as required by department.
- 84-2106. Statement of distributed gas—payment of tax—state treasurer's duty—examination and computing of tax by department—adjustment of excess payment or deficit.
- 84-2108. Department to determine tax if no statement filed—penalty and interest—collection of tax.

84-2102. (2408.2) Natural gas distributors' license tax—amount—standard for measurement of gas distributed—persons not contemplated by act. Every person engaged in or carrying on the business of distributing to consumers within this state, natural gas, produced, or not produced within this state, or engaged in or carrying on the business of owning, controlling, managing, leasing or operating within this state, any system or plant for the distribution of natural gas, produced, or not produced within this state, to consumers within this state for the purpose of use

outside this state, or engaged in or carrying on the business of owning, controlling, managing, leasing or operating within this state, any system or plant for the distribution of natural gas, produced, or not produced within this state, to consumers within this state must, for the year beginning January 1, 1969, and each year thereafter when engaged in carrying on such business in this state, pay to the state treasurer for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business an amount equal to five hundred seventy-five thousandths (.575) of one (1) cent for each one thousand (1,000) cubic feet of such natural gas, produced within this state, or not produced within this state, and distributed by such person to consumers within this state, during such year, or conveyed through a pipeline to a point outside this state during such year, except in connection with the operating of natural gas wells from which the same was extracted or produced, or delivered by such person to any other person for sale; provided that the standard or base pressure to be used in the measurement of such gas so distributed for determining the amount of license tax imposed hereunder, shall be ten (10) ounces above an atmospheric pressure of fourteen (14) and four-tenths (4/10) pounds per square inch, and at a temperature of sixty (60) degrees Fahrenheit, regardless of the atmospheric pressure and temperature at the point of measurement, and all measurements of gas shall be reduced, by computation, to these standards no matter what may have been the pressure and temperature at which gas was actually produced or measured; provided, however, that nothing in this act shall be construed as requiring laborers, employees, hired or employed, by any person to work on or about, or in connection with any natural gas well property or business, to pay such license taxes, nor shall any work required to be done in prospecting, or in developing, or opening up any natural gas property or plant, be deemed to be carrying on of natural gas business, or engaging in the business of working or operating of a natural gas well or plant; provided further, that if during any such work of developing any natural gas property, any marketable natural gas shall be extracted or produced and sold, then the same shall be deemed the carrying on of a natural gas business of distributing to consumers.

History: En. Sec. 2, Ch. 180, L. 1933; amd. Sec. 1, Ch. 52, Ex. L. 1933; amd. Sec. 1, Ch. 205, L. 1957; amd. Sec. 1, Ch. 8, Ex. L. 1969; amd. Sec. 1, Ch. 325, L. 1971.

Amendments

The 1969 amendment inserted the following proviso: "provided, however, for the two taxable years commencing on or after January 1, 1969, the tax shall be computed at the rate of five hundred seventy-five thousandths (.575) of one cent for each one thousand (1,000) cubic feet of such natural gas, produced within this state, or not produced within this state, and distributed by such person to consumers within this state, during such year, or conveyed through a pipeline to a point outside this state during such year, except in connection with the operating of natural gas wells from which the same was ex-

tracted or produced, or delivered by such person to any other person for sale."

The 1971 amendment substituted "January 1, 1969" for "July 1, 1957"; increased the tax rate from $\frac{1}{2}\text{¢}$ to .575¢ per thousand cubic feet; and deleted the proviso inserted by the 1969 amendment.

Effective Dates

Section 2 of Ch. 8, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

Section 2 of Ch. 325, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Cross-References

Multistate tax compact, sec. 84-6701.

84-2104. (2408.4) Certificate to be filed with department—time for filing—contents of certificate. Each and every person engaged in any such business in the state of Montana at the time when this act becomes effective must not, later than the thirtieth day of April, 1933, and every person who shall engage in any such business at any time after the date when this act becomes effective, immediately, upon engaging in any such business, file with the state department of revenue a certificate and statement, on forms prescribed by the state department of revenue, which shall contain the name under which such person is engaged in carrying on such business in this state, giving the place or places of business and the location of the well or wells, plant or property, owned, leased, controlled or operated by such person in such business; the name and address of the managing agent in this state if an association, corporation, joint-stock company or syndicate, or if a firm or copartnership, the names and addresses of the persons composing the same, of an association, joint-stock company, corporation or syndicate, the laws of the state under which organized, its principal place of business, and the names and addresses of its principal officers; and such other information as the department may deem necessary.

History: En. Sec. 4, Ch. 180, L. 1933;
amd. Sec. 109, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-2105. (2408.5) Records to be kept as required by department. Every such person shall keep a record, in such form as the state department of revenue may require, of all natural gas extracted or produced, transported or carried, sold, furnished or delivered by such persons in this state and such records shall at all times during the business hours of the day, be subject to inspection of the state department of revenue, its members, agents or employees.

History: En. Sec. 5, Ch. 180, L. 1933;
amd. Sec. 110, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

84-2106. (2408.6) Statement of distributed gas—payment of tax—state treasurer's duty—examination and computing of tax by department—adjustment of excess payment or deficit. (1) Each and every person must, within thirty (30) days after the quarterly period ending March 31, 1933, and within thirty (30) days after the end of each following quarterly period, make out, in duplicate, on forms prescribed by the state department of revenue, and deliver to the state treasurer, a statement showing the quantity of merchantable or marketable gas produced or extracted, transported or carried, sold, furnished or delivered by such person in the state of Montana during each month of each quarterly period and during the whole of said quarterly period, together with total amount due the state as license tax for such quarterly period; and must, within such thirty (30) days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana for the quar-

terly period for which such statement is made; such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, corporation, joint-stock company or syndicate making the same. Any such person engaged in or carrying on such business at more than one (1) place in this state, or owning, controlling or operating more than one (1) natural gas well or plant for the distribution of natural gas in this state, may include all thereof in one (1) statement. The state treasurer shall receive and file all such statements and collect and receive from such person making and filing a statement with him, the amount of tax payable by such person, if any, as the same shall appear from the face of the statement. The state treasurer shall endorse on each statement as soon as the same is received by him, the date when so received, and the name and post-office address of the person from whom received; and the amount of tax, if any, paid by such person; and he must number such statement consecutively, beginning with number one (1) for each year followed by the year.

(2) The state treasurer shall keep a book in such form as shall be approved by the state department of revenue, in which he shall enter such statement filed with him in the order in which received and filed, the number thereof, date of filing, name of person making the return and the amount of tax, if any, paid by such person, which book shall be designated "state treasurer's record of natural gas license tax." The state treasurer shall within ten (10) days after the end of each month deliver over to the state department of revenue all statements filed with him and not already delivered to said department, and such statements shall then be filed in the office of, and become a part of the records of the state department of revenue.

(3) It shall be the duty of the state department of revenue to examine each of such statements and compute the taxes thereon, and the amount so computed by the department shall be the taxes imposed, assessed against and payable by the person making the statement for the quarterly period for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the state department of revenue within ten (10) days after written notice of the amount of the deficiency shall be mailed by the state department of revenue to such taxpayer. Provided, that if the tax imposed shall be less than the amount paid, the difference must be refunded to the person making such payment.

History: En. Sec. 6, Ch. 180, L. 1933;
amd. Sec. 111, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

84-2108. (2408.8) Department to determine tax if no statement filed—penalty and interest—collection of tax. If any such person shall fail, neglect or refuse to file any statement required by the provisions of this act within the time therein required, the state department of revenue shall immediately after such time has expired, proceed to inform itself, as best it may, regarding the quantity of natural gas extracted and produced,

transported or carried, sold, furnished or delivered by such person in this state during such quarterly period and during each month thereof, and shall determine and fix the amount of the license tax due the state from such person for such quarterly period and shall make out a statement, in duplicate, showing the same and shall add to the amount of such license tax a penalty of twenty-five (25) per cent thereof and deliver one (1) of such statements to the state treasurer, who shall proceed to collect the amount of such license tax, with penalty added thereto, and interest on the whole thereof at the rate of twelve (12) per cent per annum from the date of making such statement by the state department of revenue, until paid.

Upon the request of the state treasurer, it shall be the duty of the attorney general to commence and prosecute to final determination, in any court of competent jurisdiction, an action at law for the collection of the same.

History: En. Sec. 8, Ch. 180, L. 1933; amd. Sec. 112, Ch. 516, L. 1973.

partment of revenue" for "board of equalization" near the beginning and end of the first paragraph.

Amendments

The 1973 amendment substituted "de-

CHAPTER 22—LICENSE TAXES—OIL PRODUCERS

Section

- 84-2202. Oil producers' license tax—amount—exceptions.
- 84-2203. Payment of tax.
- 84-2204. Determination of gross value of product.
- 84-2205. Producers to file reports.
- 84-2206. Record of product—carriers to furnish data.
- 84-2207. Statement to accompany payment—records—collection of tax—refunds.
- 84-2209. Procedure to compute and collect tax in absence of statement.

84-2202. (2398) Oil producers' license tax — amount — exceptions.

Every person engaging in or carrying on the business of producing, within this state, petroleum, or other mineral or crude oil, or engaging in or carrying on the business of owning, controlling, managing, leasing or operating within this state any well or wells from which any merchantable or marketable petroleum or other mineral or crude oil is extracted or produced, sufficient in quantity to justify the marketing of the same, must, for the year beginning July 1, 1957, and each year thereafter, when engaged in or carrying on any such business in this state, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, computed at the following rates:

(a) Two and one-tenth per cent (2.1%) of the total gross value of that portion of all the petroleum and other mineral or crude oil produced by such person from each lease or unit in the calendar quarter not in excess of an amount obtained by multiplying the number of producing wells on such lease or unit by four hundred fifty (450) barrels.

(b) Two and sixty-five hundredths per cent (2.65%) of the total gross value of that portion of all the production of such person from each lease or unit in each calendar quarter in excess of four hundred fifty (450)

barrels multiplied by the number of producing wells on such lease or unit; but in determining the amount of such tax there shall be excluded from consideration all petroleum, or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing and producing such petroleum, crude or mineral oil; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed by any person, to drill any oil well, or to work in or about any oil well, or prospect or explore for, or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such license tax, nor shall any work be done, or the drilling of any well or wells, for the purpose of prospecting or exploring for petroleum or other mineral or crude oils, or for the purpose of developing same, be deemed to be engaging in or carrying on of any such business; provided, further, that in the doing of any such work, or in the drilling of any oil well, or in such prospecting, exploring or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation shall be produced sufficient in quantity to justify the marketing of the same, then such work, drilling, prospecting, exploring or development work shall be deemed to be the engaging in and carrying on of such business within this state within the meaning of this section.

(c) Every person required to pay such tax hereunder shall pay the same in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of such extracted marketable petroleum or other mineral or crude oil; in all leases establishing royalty interests entered into hereafter or in renewals of existing leases, or in division of proceeds orders, or by other contracts, such other owner or owners may agree with every person required to pay such tax that such other owner or owners will pay their prorata share of said tax, and that said prorata share may be deducted from any settlements under said lease or leases or division of proceeds orders or other contracts.

History: En. Sec. 2, Ch. 266, L. 1921; re-en. Sec. 2398, R. C. M. 1921; amd. Sec. 1, Ch. 67, L. 1923; amd. Sec. 1, Ch. 221, L. 1957; amd. Sec. 1, Ch. 172, L. 1959; amd. Sec. 1, Ch. 359, L. 1969.

Amendments

The 1969 amendment substituted "two and one-tenths per cent (2.1%)" for "two per cent" in subdivision (a) and "two and sixty-five hundredths per cent (2.65%)"

for "two and one-half per cent" in subdivision (b); and added subdivision (c).

Effective Date

Section 2 of Ch. 359, Laws 1969 read "This act is effective for all taxable years commencing after December 31, 1968."

Cross-References

Multistate tax compact, sec. 84-6701.

84-2203. (2399) Payment of tax. Such license tax shall be paid in quarterly installments for the quarterly periods ending respectively March

31, June 30, September 30 and December 31, of each year, and the amount of the license tax for each quarterly period shall be paid to the state department of revenue within thirty (30) days after the end of each quarterly period.

History: En. Sec. 3, Ch. 266, L. 1921; re-en. Sec. 2399, R. C. M. 1921; amd. Sec. 2, Ch. 67, L. 1923; amd. Sec. 8, Ch. 14, L. 1941; amd. Sec. 113, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-2204. (2400) Determination of gross value of product. The total gross value of all petroleum, and other mineral or crude oil produced each year shall be determined by taking the total number of barrels thereof produced each month during such year at the average value at the mouth of the well during the month the same is produced, as determined by the state department of revenue; provided, however, that in computing the total number of barrels of petroleum, and other mineral or crude oil produced, there shall be deducted therefrom so much thereof as is used by such person in connection with the operation of the well from which said oil is produced or for pumping said petroleum or other mineral or crude oil from the said well to a tank or pipeline.

History: En. Sec. 4, Ch. 266, L. 1921; re-en. Sec. 2400, R. C. M. 1921; amd. Sec. 3, Ch. 67, L. 1923; amd. Sec. 114, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" immediately before the proviso.

84-2205. (2401) Producers to file reports. Each and every person engaged in such business in the state of Montana at the date when this act becomes effective, must, not later than the thirtieth day of April, 1923, and every person who shall engage in such business at any time after the date when this act becomes effective, must, immediately upon engaging in such business, file with the state department of revenue, a certificate and statement, on forms prescribed by the state department of revenue, which shall contain the name under which such person is engaging in and carrying on such business in this state, giving the place or places of business and location of the well or wells owned, leased, controlled or operated by such person; the name and address of the managing agent in this state, if an association, corporation, joint-stock company, or syndicate, or if a firm or copartnership, the names and addresses of the persons composing the same; if an association, joint-stock company, corporation or syndicate, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers; and such other information as the department may deem necessary.

History: En. Sec. 5, Ch. 266, L. 1921; re-en. Sec. 2401, R. C. M. 1921; amd. Sec. 4, Ch. 67, L. 1923; amd. Sec. 115, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-2206. (2402) Record of product—carriers to furnish data. Every such person shall keep a record in such form as the state department of revenue may require, of all petroleum and other mineral or crude oil extracted or produced by such person in this state, and such records shall at all times during the business hours of the day be subject to inspection

by the state department of revenue, its members, agents, or employees. It shall be the duty of railroad companies, pipeline and transportation companies carrying crude or mineral oil, to furnish to the state department of revenue, whenever requested so to do, all data relative to the shipment of said products, that may be required to properly enforce the provisions of this act. The failure of any railroad company, pipeline, and transportation companies to comply with the provisions of this section shall make such companies liable to a penalty of one hundred dollars (\$100.00) for each day it shall fail to furnish such statement.

History: En. Sec. 6, Ch. 266, L. 1921;
re-en. Sec. 2402, R. C. M. 1921; amd. Sec.
5, Ch. 67, L. 1923; amd. Sec. 116, Ch. 516,
L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-2207. (2403) Statement to accompany payment—records—collection of tax—refunds. (1) Each and every person must, within thirty days after the quarter ending March 31, 1923, and within sixty (60) days after the end of each following quarter, make out on forms prescribed by the department of revenue a statement showing the total number of barrels of merchantable or marketable petroleum, and other mineral or crude oil produced or extracted by such person in the state of Montana during each month of such quarter and during the whole quarter, the average value thereof during each month and the total value thereof for the whole quarter, together with the total amount due to the state as license taxes for such quarter; and must, within such sixty (60) days deliver such statement and pay to the department of revenue the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company or syndicate making the same. Any such person engaged in carrying on such business at more than one place in this state, or owning, leasing, controlling, or operating more than one oil well in this state, may include all thereof in one statement. The department of revenue shall receive and file all such statements and collect and receive from such person making and filing a statement the amount of tax payable by such person, if any, as the same shall appear from the face of the statement.

(2) It shall be the duty of the department of revenue to examine each of such statements and compute the taxes thereon, and the amount so computed by the department of revenue shall be the taxes imposed, assessed against and payable by the taxpayer making the statement for the quarter for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the department of revenue within ten (10) days after written notice of the amount of the deficiency shall be mailed by the department of revenue to such taxpayer. Provided, that if the tax imposed shall be less than the amount paid, the difference must be applied as a credit against tax liability for subsequent quarters, or refunded if there is no subsequent tax liability.

History: En. Sec. 7, Ch. 266, L. 1921; re-en. Sec. 2403, R. C. M. 1921; amd. Sec. 6, Ch. 67, L. 1923; amd. Sec. 1, Ch. 449, L. 1973; amd. Sec. 117, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 449 and once by Ch. 516. Since the changes made by Ch. 516 were included in the changes made by Ch. 449, the compiler has set out the text of Ch. 449, above.

Amendments

Chapter 449, Laws of 1973, extended the quarterly filing date specified near the beginning of the section from thirty to sixty days after the end of the quarter; deleted "in duplicate" following "makeout" near the beginning of subsection (1); substituted references to the department of revenue for references to the state board of equalization and state treasurer throughout the section; deleted "and deliver to the state treasurer" following "on forms prescribed by the department of revenue"

near the beginning of subsection (1); deleted former subsection (2) and redesignated subsection (3) as (2); deleted from subsection (2) a first sentence requiring the state treasurer to deliver statements to the board of equalization; inserted "applied as a credit against tax liability for subsequent quarters, or" in the last sentence of subsection (2); substituted "refunded if there is no subsequent tax liability" for "refunded to the person making such payment" at the end of subsection (2); and made minor changes in phraseology.

Chapter 516, Laws of 1973, substituted references to the department of revenue for references to the state board of equalization.

Effective Date

Section 2 of Ch. 449, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 23, 1973.

84-2209. (2405) Procedure to compute and collect tax in absence of statement. If any such person shall fail, neglect or refuse to file any statement required by section 84-2207, within the time therein required, the state department of revenue shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the number of barrels of petroleum and other mineral or crude oil extracted and produced by such person in this state during such quarter, and during each month thereof, and the average value thereof during each such month, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter and shall make out a statement, in duplicate, showing the same, and shall add to the amount of such license taxes a penalty of twenty-five per cent thereof, and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent, per annum from the date of the making of such statement by the state department of revenue until paid. Upon request of the state treasurer, it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to collect the same. The twenty-five per cent penalty herein provided may be waived by the state department of revenue if reasonable cause for the failure and neglect to file the statement required by section 84-2207 is provided to the said department.

History: En. Sec. 9, Ch. 266, L. 1921; re-en. Sec. 2405, R. C. M. 1921; amd. Sec. 8, Ch. 67, L. 1923; amd. Sec. 1, Ch. 328, L. 1969; amd. Sec. 118, Ch. 516, L. 1973.

Amendments

The 1969 amendment added the last sentence.

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in four places.

CHAPTER 23—LICENSE TAXES—SLEEPING CAR COMPANIES

Section

- 84-2301. Definitions.
- 84-2302. Reports.
- 84-2303. Assessment.
- 84-2304. Method of determining valuation.
- 84-2305. Notice of hearing concerning valuation—right to appear and be heard.
- 84-2306. License tax—amount—levy—notice—payment.
- 84-2307. Failure to report—nonpayment—action for collection.
- 84-2308. Estoppel—excusing failure to file report.
- 84-2309. First imposition of tax.

84-2301. (2315.1) Definitions. The term “department” when used in this act shall mean the state department of revenue.

Any person, persons, copartnership, joint-stock company, association, or corporation (not being a railroad company or a lessee of a railroad company) wherever organized or incorporated, owning and operating, or operating any cars known as dining, buffet, chair, parlor, palace or sleeping cars, which are used upon railroads within this state, unless the ownership of such cars be identical with that of the lines of railroads on which they are operated, shall be deemed a sleeping car company for the purposes of this act.

History: En. Sec. 1, Ch. 64, L. 1923;
amd. Sec. 119, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted the definition of “department” for a definition of “board.”

84-2302. (2315.2) Reports. Every sleeping car company shall annually on or before the first day of March and in such forms and covering such period as the state department of revenue shall prescribe, make and file with it a statement verified by the oath of the person, agent or officer making the same, setting forth the facts called for. Such report shall contain:

(1) to (12). * * * [Same as parent volume.]

(13) Such other facts and information as such company or the state department of revenue may deem material upon the question of the true and full value of said property within this state. The department shall furnish forms upon which to make such reports.

History: En. Sec. 2, Ch. 64, L. 1923;
amd. Sec. 120, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted refer-

ences to the department of revenue for references to the state board of equalization in the preliminary clause and subdivision (13).

84-2303. (2315.3) Assessment. The state department of revenue shall carefully consider all reports made pursuant to section 84-2302 and all other facts and evidence collected and available, and shall fix the valuation of the property of sleeping car companies operating in the state for the purpose of levying and collecting license taxes thereon, as hereinafter provided.

History: En. Sec. 3, Ch. 64, L. 1923;
amd. Sec. 121, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-2304. (2315.4) Method of determining valuation. (1). * * *
[Same as parent volume.]

(2) The department shall then divide the amount so obtained by the total car mileage on railroads over which the company did business to obtain the value per car mile, and shall then multiply the value per car mile thus obtained by the total number of car miles within this state. The result shall be taken and considered as the actual value of the property of such company subject to the license tax in this state, subject to review as provided in section 84-2305.

History: En. Sec. 4, Ch. 64, L. 1923;
amd. Sec. 122, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the beginning of subsection (2).

84-2305. (2315.5) Notice of hearing concerning valuation—right to appear and be heard. The department shall thereupon give notice to the officer of such company attesting its report of the time and place such company may appear and be heard in respect to such valuation to be made upon its property. After such hearing the department may make such changes in its valuation as shall appear just and reasonable.

History: En. Sec. 5, Ch. 64, L. 1923;
amd. Sec. 123, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in two places.

84-2306. (2315.6) License tax—amount—levy—notice—payment. The department shall thereupon levy a license tax upon the property of such sleeping car company at the rate of one and one-half per cent ($1\frac{1}{2}\%$) on the valuation thus found by it for the use of the state, and the department shall certify such assessment and levy to the state treasurer, who shall thereupon, by registered letter, notify the officer attesting the report of such company, of the amount of the assessment, the rate of levy and the amount of the tax; and such company shall have thirty days after the mailing of such notice within which to pay said tax to the state treasurer. And such tax when paid shall be turned into the general fund of the state treasury.

History: En. Sec. 6, Ch. 64, L. 1923;
amd. Sec. 124, Ch. 516, L. 1973.

Cross-References

Multistate tax compact, sec. 84-6701.

Amendments

The 1973 amendment substituted "department" for "board" in two places.

84-2307. (2315.7) Failure to report—nonpayment—action for collection. (1) If any sleeping car company shall fail to make the report required of it by this act, the department shall proceed upon the best information it may be able to obtain to fix the valuation against such

company and shall notify it by letter of the action taken in that behalf. Thereupon the company so notified may appear and be heard as above provided.

(2) to (4). * * * [Same as parent volume.]

History: En. Sec. 7, Ch. 64, L. 1923;
amd. Sec. 125, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in subsection (1).

84-2308. (2315.8) Estoppel—excusing failure to file report. (1) If any company described in section 84-2301 or its officers or agents shall unreasonably refuse or neglect to make any report required by law or by the said department, or shall unreasonably refuse or neglect to answer any material question, or to permit an inspection of its records, books, accounts or papers when requested by said board, it shall be estopped to question or impeach the action or determination of the department, except upon satisfactory proof of fraud or mistake injurious to it.

(2) No such company shall be allowed in any action or proceeding to question the amount or valuation of its property and franchises as assessed by the department, unless it shall have made and filed with the department a full and complete report of the facts and information prescribed by law, and called for by the department; provided, that the refusal or neglect of such company to file its report in time may, on verified petition and for good cause shown, be excused by the department on condition that such company make a full and complete report disclosing all facts and information required of it within fifteen days after leave is given to file such report, and shall appear before the department and make full disclosure of all property liable to assessment and taxation under this act.

History: En. Sec. 8, Ch. 64, L. 1923;
amd. Sec. 126, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" throughout the section.

84-2309. (2315.9) First imposition of tax. The license tax shall be first imposed and paid for the whole calendar year 1923, and shall be based upon the reports as prescribed in section 84-2302 for the year 1922, and such report shall be made to the department by April first, 1923.

History: En. Sec. 9, Ch. 64, L. 1923;
amd. Sec. 127, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the end of the section.

CHAPTER 24—LICENSE TAXES—STORE LICENSE

Section

- 84-2401. Store license from department of revenue required.
- 84-2402. Application and fee for license.
- 84-2403. Department to consider application—issuance of license.
- 84-2404. Expiration and renewal of licenses.
- 84-2405. Retailers subject to act—license fees for.
- 84-2407. Wholesale store licenses.
- 84-2410. "Store" defined.
- 84-2412. Employment of help—disposal of license money.

84-2401. Store license from department of revenue required. That it shall be unlawful for any person, firm, corporation, association or copartnership, either foreign or domestic, to open, establish, operate or maintain any store or stores in this state without first having obtained a license to do so from the state department of revenue, as hereinafter provided.

History: En. Sec. 1, Ch. 163, L. 1939; amd. Sec. 128, Ch. 516, L. 1973. partment of revenue" for "board of equalization" near the end of the section.

Amendments

The 1973 amendment substituted "de-

Cross-References

Multistate tax compact, sec. 84-6701.

84-2402. Application and fee for license. Any person, firm, corporation, association, copartnership or group desiring to open, establish, operate or maintain a store in the state of Montana prior to September 1 of that calendar year shall apply to the state department of revenue for license to do so. The application shall be made upon a form which shall be prescribed and furnished by the state department of revenue, and shall set forth the name of the owner, manager, trustee, lessee, stockholders, receiver or other persons desiring said license; the name of such store; the location, including street number; and all such other facts as the state department of revenue may require.

If the applicant desires to open, establish, operate or maintain more than one such store, he shall make a separate application for a license to operate, maintain, open or establish each such store.

Each such application shall be accompanied by the license fee as prescribed in sections 84-2405 and 84-2407.

History: En. Sec. 2, Ch. 163, L. 1939; amd. Sec. 1, Ch. 122, L. 1955; amd. Sec. 9, Ch. 121, L. 1965; amd. Sec. 1, Ch. 160, L. 1971; amd. Sec. 1, Ch. 240, L. 1973; amd. Sec. 129, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 240 and once by Ch. 516. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment deleted from the end of the second paragraph a clause reading "but the respective stores for which the applicant desires to secure licenses may all be listed upon one (1) application blank."

Chapter 240, Laws of 1973, deleted from the end of the third paragraph a reference to former section 84-2406; and made a minor change in style.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization" three times in the first paragraph.

84-2403. Department to consider application—issuance of license. As soon as practicable after the receipt of any such application, the state department of revenue shall carefully examine such application to ascertain whether it is in proper form and contains the necessary and requisite information. If, upon examination, the state department of revenue shall find that such application is not in proper form and does not contain the necessary and requisite information, it shall return such application for correction.

If an application is found to be satisfactory, and if the filing and license fee, as herein prescribed, shall have been paid, the state department of revenue shall issue to the applicant a license for each store for which an application for a license shall have been made.

Each licensee shall display the license so issued in a conspicuous place in the store for which such license was issued.

History: En. Sec. 3, Ch. 163, L. 1939; amd. Sec. 130, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-2404. Expiration and renewal of licenses. All licenses shall be so issued so as to expire December 31 of each calendar year. On or before December 31 of each calendar year, every firm, person, corporation, association, copartnership having a license, shall apply to the state department of revenue for a renewal license for the calendar year next ensuing. All applications for a renewal shall be made upon forms which shall be prescribed and furnished by the state department of revenue.

Each such application for a renewal license shall be accompanied by the license fee as prescribed in sections 84-2405 and 84-2407.

All licenses shall lapse on December 31 of the year for which the license was issued, and if, by December 31, an application for a renewal license for the calendar year next ensuing has not been made, the fee charged shall be double the rate prescribed in sections 84-2405 and 84-2407.

History: En. Sec. 4, Ch. 163, L. 1939; amd. Sec. 2, Ch. 122, L. 1955; amd. Sec. 10, Ch. 121, L. 1965; amd. Sec. 2, Ch. 160, L. 1971; amd. Sec. 2, Ch. 240, L. 1973; amd. Sec. 131, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 240 and once by Ch. 516. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment substituted "thirty-first day of December of each calendar

year" in the second sentence of the first paragraph for "first day of January of each year"; substituted "All licenses shall lapse on the thirty-first day of December of the year" at the beginning of the third paragraph for "No license shall lapse prior to the first day of March next following the year"; changed the application date specified in the third paragraph from March 1 to December 31; and inserted "for the calendar year next ensuing" in the third paragraph.

Chapter 240, Laws of 1973, deleted references to former section 84-2406 from the ends of the second and third paragraphs; and made minor changes in style.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization" twice in the first paragraph.

84-2405. Retailers subject to act—license fees for. Every person, firm, corporation, association, copartnership or group opening, establishing, operating or maintaining one (1) or more retail stores or mercantile establishments, within this state, under the same general management, supervision or ownership, where a stock of goods is maintained during any portion of the year, regardless of whether the stock is held by ownership, consignment, agency or any other means, shall pay the license fee hereinafter prescribed for the privilege of opening, establishing, operating, or maintaining such stores or mercantile establishments, provided that the members of any group, association or consumer co-operative composed of independent units owning their own business and grouped or associated together by agreement or otherwise for the purpose of purchasing or selling merchandise or service for the mutual benefit of the members shall not be grouped for computing the license fee to be paid by the person,

firm, corporation, association, or copartnership or retailer under this act, but the units or members shall be taxed as individual units.

The license fee herein prescribed shall be paid annually.

The annual license fees herein prescribed for retail stores or mercantile establishments which have gross receipts in excess of three hundred fifty thousand dollars (\$350,000) per year shall be as follows:

1. Upon one store the annual license fee shall be eleven dollars (\$11).
2. Upon the second store, the annual license fee shall be fifty-six dollars (\$56).
3. Upon the third store, the annual license fee shall be one hundred and six dollars (\$106).
4. Upon the fourth store, the annual license fee shall be one hundred and fifty-six dollars (\$156).
5. Upon the fifth store, and on each store in excess of five (5) stores, the annual license fee shall be two hundred and six dollars (\$206).

The annual license fees herein prescribed for retail stores or mercantile establishments which do not have gross receipts in excess of three hundred fifty thousand dollars (\$350,000) per year shall be as follows:

1. Upon one store the annual license fee shall be eleven dollars (\$11).
2. Upon the second store, the annual license fee shall be thirteen dollars and fifty cents (\$13.50).
3. Upon the third store, the annual license fee shall be twenty-one dollars (\$21).
4. Upon the fourth store, the annual license fee shall be twenty-eight dollars and fifty cents (\$28.50).
5. Upon the fifth store, the annual license fee shall be thirty-six dollars (\$36).
6. Upon the sixth store, and each store in excess of six (6), the annual license fee shall be forty-four dollars and fifty cents (\$44.50).

For the purpose of determining the number of stores or units in the chain, all stores or units in the chain shall be included regardless of size even though one or more stores or units may be included in a different category for this license, provided the larger stores or units shall be counted last.

History: En. Sec. 5, Ch. 163, L. 1939; amd. Sec. 11, Ch. 121, L. 1965; amd. Sec. 3, Ch. 240, L. 1973; amd. Sec. 1, Ch. 200, L. 1974.

Amendments

The 1973 amendment deleted from the end of the first paragraph a proviso excluding businesses licensed under former section 84-2406; increased licensing fees in each category by five dollars; and made

minor changes in style and phraseology.

The 1974 amendment inserted "for retail stores or mercantile establishments which have gross receipts in excess of three hundred fifty thousand dollars (\$350,000) per year" in the introductory phrase in the third paragraph; added the fourth paragraph relating to fees for stores or establishments with gross receipts less than \$350,000; and added the final paragraph.

84-2406. Repealed.

Repeal

Section 84-2406 (Sec. 6, Ch. 163, L. 1939; amd. Sec. 12, Ch. 121, L. 1965), relating to

the business establishments required to procure licenses and the fees therefor, was repealed by Sec. 7, Ch. 240, Laws 1973.

84-2407. Wholesale store licenses. Wholesale stores shall be taxed in all cases as individual units at the rate of forty-three dollars and fifty cents (\$43.50) per unit, regardless of ownership; but, whenever goods, wares, and merchandise are sold regularly at both wholesale and retail from one establishment, the operator thereof shall pay the license fee required under section 84-2405 for the conduct of a retail store, in addition to the wholesale license herein provided for.

History: En. Sec. 7, Ch. 163, L. 1939; amd. Sec. 13, Ch. 121, L. 1965; amd. Sec. 4, Ch. 240, L. 1973.

Amendments

The 1973 amendment increased the tax on individual units from \$38.50 to \$43.50; and deleted a reference to former section 84-2406 near the end of the section.

84-2410. "Store" defined. The term "store" as used in this act shall be construed to mean and include any store or stores or any mercantile establishment or establishments which are owned, operated, maintained or controlled by the same person, firm, corporation, association, copartnership, or group, either domestic or foreign, in which goods, wares or merchandise of any kind are sold, either at retail or wholesale; and subject to the classification contained in sections 84-2405 and 84-2407. Vending machines shall not be considered as places of business per se and are not required to be licensed under the provisions of this act.

History: En. Sec. 10, Ch. 163, L. 1939; amd. Sec. 3, Ch. 160, L. 1971; amd. Sec. 5, Ch. 240, L. 1973.

Amendments

The 1971 amendment added the second sentence.

The 1973 amendment deleted a reference at the end of the first sentence to former section 84-2406.

84-2412. Employment of help—disposal of license money. The state department of revenue is hereby authorized to employ such clerical and field assistance as may be found necessary to carry out and to administer the provisions of this act. All money collected under the provisions of this act shall be paid into the state treasury, with five dollars (\$5) of the fee collected from each store license sold credited to an earmarked revenue fund for administration of the Unfair Practices Act by the department of business regulation and the rest to the credit of the general fund.

History: En. Sec. 12, Ch. 163, L. 1939; amd. Sec. 1, Ch. 266, L. 1971; amd. Sec. 6, Ch. 240, L. 1973; amd. Sec. 132, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 240 and once by Ch. 516. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment deleted "less the expenses incurred in the administration

of this act" after "of this act" in the second sentence.

Chapter 240, Laws of 1973, inserted "with five dollars (\$5) of the fee collected from each store license sold credited to an earmarked revenue fund for administration of the Unfair Practices Act by the department of business regulation and the rest" at the end of the second sentence.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization."

Repealing Clause

Section 7 of Ch. 240, Laws 1973 read "Section 84-2406, R. C. M. 1947, is repealed."

CHAPTER 25—LICENSE TAXES—TELEGRAPH COMPANIES

Section

- 84-2502. Statement of gross income—contents—payment to accompany.
- 84-2503. Rules and regulations for enforcement may be adopted by department.
- 84-2505. Records to be kept as required by department.
- 84-2507. Department to determine tax in case no statement filed—penalty and interest—collection of tax—perfection and enforcement of tax lien.
- 84-2508. Books and records to be open to inspection by department.

84-2501. (2355.1) Telegraph license tax, etc.

Cross-References

Multistate tax compact, sec. 84-6701.

84-2502. (2355.2) Statement of gross income—contents—payment to accompany. Each and every person, association or corporation engaged in carrying on such business in this state, shall, within thirty (30) days after the end of each quarter, beginning with the quarter ending March 31, 1934, make out in duplicate and file with the state department of revenue, under oath, a statement in such form as the state department of revenue may require and prescribe, showing the total gross income of such person, association or corporation derived from business within this state including the transmission of telegraph messages originating and terminating within this state, but excluding therefrom the gross income derived from the transmission of telegraph messages passing through this state but both originating and terminating outside of this state and from those originating outside of, but terminating within, this state and from those originating within, but terminating outside of, this state during the preceding quarter, and containing such other information as the state department of revenue may require; and shall accompany such statement with the payment to the state department of revenue of a license tax in amount equal to two per cent (2%) of such gross income.

History: En. Sec. 2, Ch. 41, Ex. L. 1933; amd. Sec. 2, Ch. 157, L. 1935; amd. Sec. 133, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in four places.

84-2503. (2355.3) Rules and regulations for enforcement may be adopted by department. The state department of revenue shall have the power, and it shall be its duty from time to time to adopt, publish and enforce such rules and regulations not inconsistent herewith as it may deem requisite for the purpose of carrying out the provisions of this act.

History: En. Sec. 3, Ch. 41, Ex. L. 1933; amd. Sec. 134, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

84-2505. (2355.5) Records to be kept as required by department. Each person, association or corporation shall keep a record in such form as the state department of revenue shall require showing the total gross receipts, as herein described, and such other information as the state department of revenue may require.

History: En. Sec. 5, Ch. 41, Ex. L. 1933; amd. Sec. 135, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

84-2507. (2355.7) Department to determine tax in case no statement filed—penalty and interest—collection of tax—perfection and enforcement of tax lien. (1) If any person, association or corporation subject to the payment of such license tax shall fail, neglect or refuse to make any statement required by this act, or shall fail to make payment of such license tax within the time herein provided, the state department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such statement and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of the license tax due the state from such delinquent person, association or corporation, and shall add thereto a penalty of five per cent (5%) thereof for the first failure, neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect and refusal, which shall be in addition to the ten per cent (10%) penalty hereinbefore provided for nonpayment of such license tax within the time herein provided. Said license tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer of the state of Montana shall then proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination, in any court of competent jurisdiction, an action to collect such license tax.

(2) All license taxes due from any person, association or corporation under the provisions of this act, together with all penalties and interest thereon, shall be a lien upon any and all property of such person, association or corporation upon the filing by the state department of revenue, of a duplicate copy of the statement so made by the state department of revenue, or a certified copy of any statement filed with said department in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as other liens are enforced by law. No action shall be maintained to enjoin the collection of such license tax or any part thereof.

(3). * * * [Same as parent volume.]

History: En. Sec. 7, Ch. 41, Ex. L. 1933; amd. Sec. 136, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment of revenue" for "board of equalization" once near the beginning of subsection (1), and three times in subsection (2).

84-2508. (2355.8) Books and records to be open to inspection by department. The books and records of every person, association or corporation shall be open and subject to inspection by the state department of revenue or any of its employees or assistants during business hours so far as may be necessary to ascertain the amount of license tax due.

History: En. Sec. 8, Ch. 41, Ex. L. 1933; amd. Sec. 137, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

CHAPTER 26—LICENSE TAXES—TELEPHONE COMPANIES

Section

- 84-2601. Annual tax levied on gross income of telephone business.
- 84-2602. Statement and payment on gross income—certain business excluded.
- 84-2603. Department to adopt rules.
- 84-2605. Taxpayer to keep records.
- 84-2607. Department to levy tax on failure of taxpayer to make statement.
- 84-2608. Books of taxpayer open to inspection.

84-2601. Annual tax levied on gross income of telephone business.

That on and after the first day of April, 1969, there is hereby levied and shall be collected an annual tax of one and seven hundred twenty-five thousandths per cent (1.725%) of the gross income, in excess of two hundred fifty dollars (\$250) quarterly, derived from any telephone business within this state including the transmission of telephone messages in this state, over telephone lines or by microwave electronic equipment, in this state owned by any person, association or corporation; provided, however, that no bill, statement or account rendered or given any customer shall set out or contain, as a separate item, any amount on account or by reason of the license tax imposed by this act. Such annual license tax shall be paid in quarterly installments for the quarters ending respectively March 31, June 30, September 30, and December 31, in each year.

History: En. Sec. 1, Ch. 94, L. 1937; amd. Sec. 1, Ch. 41, L. 1947; amd. Sec. 1, Ch. 213, L. 1957; amd. Sec. 1, Ch. 7, Ex. L. 1969; amd. Sec. 1, Ch. 326, L. 1971.

The 1971 amendment made the 1969 increase permanent by substituting "1969" for "1957," changing the rates in the body of the section and deleting the proviso inserted by the 1969 amendment; and inserted "or by microwave electronic equipment."

Amendments

The 1969 amendment inserted a proviso increasing the rate of tax from $1\frac{1}{2}\%$ to 1.725% for the two taxable years commencing on or after April 1, 1969.

Cross-References

Multistate tax compact, sec. 84-6701.

84-2602. Statement and payment on gross income—certain business excluded.

Each and every person, association or corporation liable to tax under this act engaged in carrying on such telephone business in this state shall, within sixty (60) days after the end of each quarter, beginning with the quarter ending June 30, 1969, make out in duplicate and file with the state department of revenue, under oath, a statement in such form as the state department of revenue may require and prescribe, showing the total gross income of such person, association or corporation derived from the telephone business within this state including the transmission of telephone messages originating and terminating within this state, but excluding therefrom the gross income derived from the transmission of telephone messages passing through this state but both originating and terminating outside of this state and from those originating outside of, but terminating within this state and from those originating within but terminating outside this state during the preceding quarter, and containing such other information as the state department of revenue may require; and

shall accompany such statement with the payment to the state department of revenue of a license tax in the amount equal to one and seven hundred twenty-five thousandths per cent (1.725%).

History: En. Sec. 2, Ch. 94, L. 1937; amd. Sec. 2, Ch. 213, L. 1957; amd. Sec. 2, Ch. 7, Ex. L. 1969; amd. Sec. 2, Ch. 326, L. 1971; amd. Sec. 138, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted "June 30, 1969" for "September 30, 1957" and added a proviso increasing the rate from 1½% to 1.725% for the two taxable years commencing on or after April 1, 1969.

The 1971 amendment made the 1969 increase permanent by substituting the 1969 tax rate in the body of the section

and deleting the proviso added in 1969, and corrected a typographical error.

The 1973 amendment substituted "department of revenue" for "board of equalization" in four places.

Effective Dates

Section 3 of Ch. 7, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

Section 3 of Ch. 326, Laws 1971 read "This act is effective on April 1, 1971."

84-2603. Department to adopt rules. The state department of revenue shall have the power, and it shall be its duty from time to time to adopt, publish and enforce such rules and regulations not inconsistent herewith as it may deem requisite for the purpose of carrying out the provisions of this act.

History: En. Sec. 3, Ch. 94, L. 1937; amd. Sec. 139, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-2605. Taxpayer to keep records. Each person, association or corporation liable to tax under this act shall keep a record in such form as the state department of revenue shall require showing the total gross receipts, as herein described, and such other information as the state department of revenue may require.

History: En. Sec. 5, Ch. 94, L. 1937; amd. Sec. 140, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

84-2607. Department to levy tax on failure of taxpayer to make statement. (1) If any person, association or corporation subject to the payment of such license tax shall fail, neglect or refuse to make any statement required by this act, or shall fail to make payment of such license tax within the time herein provided, the state department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such statement and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of the license tax due the state from such delinquent person, association or corporation, and shall add thereto a penalty of five per cent (5%) thereof for the first failure, neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect and refusal, which shall be in addition to the ten per cent (10%) penalty hereinbefore provided for nonpayment of such license tax within the time herein provided. Said license tax and the penalties added thereto shall bear interest at the rate of one per cent (1%)

per month from the date such statements should have been made and said license tax paid. The state treasurer of the state of Montana shall then proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination, in any court of competent jurisdiction, an action to collect such license tax.

(2) All license taxes due from any person, association or corporation under the provisions of this act, together with all penalties and interest thereon, shall be a lien upon any and all property of such person, association or corporation upon the filing by the state department of revenue, of a duplicate copy of the statement so made by the state department of revenue, or a certified copy of any statement filed with said department in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced by law. No action shall be maintained to enjoin the collection of such license tax or any part thereof. When the amount due the state is paid in full and before the entry of foreclosure decree, the state treasurer shall release the said lien by filing, in the office of the county clerk wherein is filed the said lien, a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of said lien a part of said property to enable the person, association or corporation to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said license taxes, penalty and interest, provided there remains, in the judgment of the state treasurer, sufficient property subject to said lien to ensure the payment of the whole of said unpaid license taxes, penalty and interest.

History: En. Sec. 7, Ch. 94, L. 1937; amd. Sec. 141, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment of revenue" for "board of equalization" once near the beginning of subsection (1), and three times in subsection (2).

84-2608. Books of taxpayer open to inspection. The books and records of every person, association or corporation shall be open and subject to inspection by the state department of revenue or any of its employees or assistants during business hours so far as may be necessary to ascertain the amount of license tax due.

History: En. Sec. 8, Ch. 94, L. 1937; amd. Sec. 142, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

CHAPTER 30—LICENSES—ITINERANT MERCHANTS

Section

84-3001 to 84-3015. [Transferred.]

84-3001 to 84-3015. [Transferred.]

Compiler's Notes

Sections 144 to 158, Ch. 218, Laws of

1974 renumbered these sections as secs. 3-3201 to 3-3215.

CHAPTER 31—LICENSES—ITINERANT VENDORS

84-3101. (2429) License of itinerant vendor of drugs, etc.**Cross-References**

Multistate tax compact, sec. 84-6701.

CHAPTER 32—LICENSES—MISCELLANEOUS COUNTY

84-3201. (2434) Billiard tables—pawnbrokers—theaters, etc.**Cross-References**

Multistate tax compact, sec. 84-6701.

84-3202. (2435) Railways acting as warehouses.**Cross-References**

Multistate tax compact, sec. 84-6701.

84-3203. (2436) License of manufacturer of soft drinks.**Cross-References**

Multistate tax compact, sec. 84-6701.

84-3204. (2438) Keeper of skating rink or merry-go-round.**Cross-References**

Multistate tax compact, sec. 84-6701.

84-3205. (2439) Moving picture shows—amount of license.**Cross-References**

Multistate tax compact, sec. 84-6701.

84-3207. (2441) Architects, builders, contractors, manufacturers.**Cross-References**

Multistate tax compact, sec. 84-6701.

84-3208. (2442) Manufacturers of malt.**Cross-References**

Multistate tax compact, sec. 84-6701.

CHAPTER 34—LICENSES—PRODUCE WHOLESALERS

Section

84-3402 to 84-3408. [Transferred.]

84-3410. [Transferred.]

84-3413 to 84-3416. [Transferred.]

84-3401. (2443.1) Repealed.**Repeal**

Section 84-3401 (Sec. 1, Ch. 164, L. 1933), defining a produce wholesaler, was

repealed by Sec. 173, Ch. 218, Laws of 1974.

84-3402 to 84-3408. [Transferred.]**Compiler's Notes**

Sections 159 to 165 renumbered these sections as secs. 3-3301 to 3-3307.

84-3409. (2443.9) Repealed.

Repeal

Section 84-3409 (Sec. 9, Ch. 164, L. 1933), relating to the record of proceed-

ings and hearings before the commissioner, was repealed by Sec. 173, Ch. 218, Laws of 1974.

84-3410. [Transferred.]

Compiler's Notes

Section 166, Ch. 218, Laws of 1974 re-numbered this section as sec. 3-3308.

84-3411, 84-3412. (2443.11, 2443.12) Repealed.

Repeal

Sections 84-3411 and 84-3412 (Secs. 11, 12, Ch. 164, L. 1933), relating to appeals

from decisions of the commissioner, were repealed by Sec. 173, Ch. 218, Laws of 1974.

84-3413 to 84-3416. [Transferred.]

Compiler's Notes

Sections 167 to 170, Ch. 218, Laws of

1974 renumbered these sections as secs. 3-3309 to 3-3312.

CHAPTER 35—LICENSES—PUBLIC CONTRACTORS

Section

84-3501. Definitions.

84-3503. State department of revenue as registrar.

84-3505. Classes of licenses—rights granted under licenses—fees.

84-3507. Bids to show bidder is licensed, is not presently working overtime on any incomplete contract, and class of bid.

84-3508. Disposal of fees.

84-3510. Complaints against licensee—grounds—investigation—hearing—suspension of license—appeals.

84-3513. Retention of contract payments to pay assessments—transmittal to department of revenue—contractor to pay when funds not retained—refunds.

84-3514. Corporate license tax credit—additional license fees—treatment of personal property tax as credit.

84-3515. State department of revenue to establish rules and regulations.

84-3516. Failure to file contractor's license—penalty.

84-3501. (2433.1) Definitions. The following words, terms and phrases in this act are, for the purposes hereof, defined as follows:

(a). * * * [Same as parent volume.]

(b) A "public contractor" within the meaning of this act shall include any person who submits a proposal to or enters into a contract for performing all public construction work in the state, with the federal government, state of Montana, or with any board, commission or department thereof, or with any board of county commissioners, or with any city or town council, or with any agency of any thereof, or with any other public board, body, commission or agency, authorized to let or award contracts for any public work when the contract cost, value or price thereof exceeds the sum of one thousand dollars (\$1,000).

(c). * * * [Same as parent volume.]

(d) "Gross receipts" means all receipts from sources within the state whether in the form of money, credits or other valuable consideration, received from, engaging in or conducting a business, without deduction on account of the cost of the property sold, the cost of the materials used,

labor or service cost, interest paid, taxes, losses or any other expense whatsoever. However, "gross receipts" shall not include cash discounts allowed and taken on sales and sales refunds, either in cash or by credit, uncollectible accounts written off from time to time, and payments received in final liquidation of accounts included in the gross receipts of any previous return made by the person.

History: En. Sec. 1, Ch. 178, L. 1935; amd. Sec. 1, Ch. 195, L. 1967.

Amendments

The 1967 amendment in subsection (b) inserted "for performing all public con-

struction work in the state" after "into a contract"; inserted "federal government" before "state of Montana"; deleted "the construction or reconstruction" after "award contracts for"; and added subsection (d).

84-3503. (2433.3) State department of revenue as registrar. The state department of revenue of the state of Montana is hereby constituted the registrar for the purpose of this act, and is empowered to employ such assistance and to procure such records, supplies and equipment as may be necessary to carry out its provisions.

History: En. Sec. 3, Ch. 178, L. 1935; amd. Sec. 143, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-3505. (2433.5) Classes of licenses—rights granted under licenses—fees. (1) There shall be three (3) classes of licenses issued under the provisions of this act; and such classes of licenses are hereby designated as Classes A, B, and C. Any applicant for a license under the provisions hereof, shall specify in his application the class of license applied for.

(2) The holder of a Class A license shall be entitled to engage in the public contracting business within the state of Montana without any limitation as to the value of a single public contract project, subject, however, to such prequalification requirements as may be imposed by the public body or bodies referred to in section 84-3501 (b) and at the time of making the application for such license the applicant shall pay to the registrar a fee in the sum of two hundred dollars (\$200).

(3) The holder of a Class B license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of fifty thousand dollars (\$50,000); and shall pay unto the registrar as a license fee the sum of one hundred dollars (\$100) for such Class B license at the time of making application therefor.

(4) The holder of a Class C license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of twenty-five thousand dollars (\$25,000); and shall pay unto the registrar as a license fee the sum of ten dollars (\$10) at the time of making application therefor.

(5) In addition to the fees enumerated above, each public contractor shall pay to the state an additional license fee in a sum equal to one per cent (1%) of the gross receipts from public contracts during the income year for which the license is issued; provided, however, that the

additional license fee hereby imposed shall not be paid upon or collectible from the gross receipts from any public contract which has been let to bid, upon which bids have been awarded, or which has been executed by a public body and a public contractor on the effective date of this act, and provided further, that the additional license fee shall be computed upon the basis of the entire contract for each separate contract let by any of the public bodies as specified in section 84-3501(b). The prime contractor shall withhold the additional one per cent (1%) license fee from payments to his sub-contractors and inform the state department of revenue, on prescribed forms, of the amount of the additional one per cent (1%) license fee in his account to be allocated and transferred to the sub-contractor. The notification to transfer portions of the additional one per cent (1%) license fee must be filed within thirty (30) days after each payment is made to sub-contractors. If any prime contractor fails to file the required allocation and transfer report at the time required by or under the provisions of this act, a penalty computed at the rate of ten per cent (10%) of the additional one per cent (1%) license fee withheld from sub-contractors shall be due from the prime contractor.

(6) Nothing herein shall require any contractor to pay any license fee on any public contract project of a value less than one thousand dollars (\$1,000), nor shall any contractor be required to have a license hereunder in order to submit a bid or proposal for contracts advertised to be let by the Montana highway commission where federal aid is obtained from the bureau of public roads or the department of agriculture of the United States; neither shall a successful bidder be required to be licensed as provided herein before the awarding and execution of any contract to be let by the state highway commission where federal aid from the bureau of public roads or the department of agriculture of the United States is involved.

History: En. Sec. 5, Ch. 178, L. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967; amd. Sec. 1, Ch. 180, L. 1974.

The 1974 amendment added the proviso at the end of subsection (5) pertaining to the computation of the additional license fee, withholding of payments, reporting requirements, and the penalty provision.

Amendments

The 1967 amendment inserted the numerical subsection designations and inserted subsection (5).

Cross-References

Multistate tax compact, sec. 84-6701.

84-3507. (2433.7) Bids to show bidder is licensed, is not presently working overtime on any incomplete contract, and class of bid. All bids and proposals for the construction of any public contract project subject to the provisions of this act shall contain a statement showing that the bidder or contractor is duly and regularly licensed hereunder and is not presently working beyond the contract time, including authorized time extensions, on any previously awarded public contract project. The number and class of such license then held by such public contractor shall appear upon such bid or proposal, and no contract shall be awarded to any contractor unless he is the holder of a license in the class within which the value of the project shall fall as hereinbefore provided, and unless the public contractor has completely executed any previous contract upon which he has worked beyond contract time.

History: En. Sec. 7, Ch. 178, L. 1935; amd. Sec. 3, Ch. 141, L. 1967.

Amendments

The 1967 amendment added "and is not presently working * * * on any previous-

ly awarded public contract project" at the end of the first sentence and added "and unless * * * he has worked beyond contract time" at the end of the second sentence.

84-3508. (2433.8) Disposal of fees. All moneys collected hereunder shall be deposited by the registrar with the state treasurer, who shall credit them to the general fund of the state.

History: En. Sec. 8, Ch. 178, L. 1935; amd. Sec. 2, Ch. 266, L. 1971.

Amendments

The 1971 amendment deleted the former

first sentence requiring expenses to be paid from fees; and deleted "less the expense incurred in the administration of this act" after "collected hereunder."

84-3510. (2433.10) Complaints against licensee—grounds—investigation—hearing—suspension of license—appeals. Any person, firm, copartnership, corporation, association or other organization may file a duly verified complaint with the registrar charging that the licensee is guilty of one or more of the following acts or omissions:

(1) to (3). * * * [Same as parent volume.]

(4) The making of any false statement in any application for a license or renewal thereof;

(5) The failure to comply with the provisions of section 82-1926 requiring preference of products manufactured or produced in this state by Montana industry and labor.

Upon the filing of such complaint the registrar shall investigate the charge and within sixty days after the filing of such complaint shall render and file said registrar's decision with said registrar's reasons therefor. If the registrar's decision be that the licensee has been guilty of any of such acts or omissions, said registrar shall suspend the contractor's license. At any time within twenty days thereafter the complainant or the contractor may petition the registrar for a rehearing. In the order granting or denying such rehearing the registrar shall set forth a statement of the particular grounds and reasons for said registrar's actions on such petition and shall mail a copy of such order to the parties who have appeared in support of or in opposition to the petition for rehearing. If a rehearing be granted, the registrar shall set the matter for further hearing on due notice to the parties, and within thirty days after submission of the matter, serve said registrar's decision after rehearing in like manner as an original decision.

The filing of such petition for rehearing as to the registrar's actions in suspending or canceling such license shall suspend the operation of such action and permit the licensee to continue to do business as a public contractor pending final determination of the controversy.

Within thirty days after the decision on rehearing, any party aggrieved by such decision of the registrar may appeal therefrom to the district court in and for the county in which the licensee under this act resides or does business as a public contractor, by serving upon the registrar a notice of

such appeal. The matter shall thereupon be heard de novo by the district court. An appeal may be taken from the decision of the district court in the same manner as appeals in other civil cases.

In all cases where the licensee has filed his notice of appeal from the decision of the registrar or from the decision of the district court, such licensee shall be entitled to continue to do business as a public contractor pending final decision of the controversy.

History: En. Sec. 10, Ch. 178, L. 1935; **Amendments**
amd. Sec. 1, Ch. 219, L. 1969. The 1969 amendment inserted item (5).

84-3513. Retention of contract payments to pay assessments—transmittal to department of revenue—contractor to pay when funds not retained—refunds. The state, county, city or any agency or department thereof, as described in section 84-3501 (b), for whom the contractor is performing public work, shall withhold, in addition to other amounts withheld as provided by law, one per cent (1%) of all payments due the contractor and shall transmit such moneys to the state department of revenue. In the event that the one per cent (1%) of gross receipts is not withheld as provided, the contractor shall make payment of these amounts to the state department of revenue within thirty (30) days after the date on which the contractor receives each increment of payment for work performed by the contractor. Any overpayment of the one per cent (1%) of gross receipts withheld, or paid by any contractor hereunder, shall be refunded by the state department of revenue at the end of the income year upon written application therefor.

History: En. Sec. 3, Ch. 195, L. 1967; **Amendments**
amd. Sec. 144, Ch. 516, L. 1973. The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

Title of Act

An act providing for additional public contractors' license fees for all public construction work in Montana, defining terms, prescribing method of collection and disposition of fees, allowing a credit on corporation or income tax and personal property taxes paid in Montana by licensees on personal property used in licensees' contracting business, providing a penalty and an effective date; amending sections 84-3501 and 84-3505, R. C. M. 1947.

Constitutionality

This act imposing a 1% gross receipts tax is constitutional; it does not violate Art. XII, § 11 of the 1889 Constitution since the classification of public contractors separately from private contractors is reasonable; it does not discriminate against the federal government, interfere with its functions or violate its immunity from taxation. *Peter Kiewit Sons' Co. v. State Board of Equalization*, — M —, 505 P 2d 102, distinguished in — M —, 507 P 2d 1040, 1045.

84-3514. Corporate license tax credit—additional license fees—treatment of personal property tax as credit. The additional license fees withheld or otherwise paid as provided herein may be used as a credit on the contractor's corporation license tax provided for in Title 84, chapter 15, R.C.M. 1947, or on the contractor's income tax provided for in Title 84, chapter 49, R.C.M. 1947, depending upon the type of tax the contractor is required to pay under the laws of the state.

Personal property taxes paid in Montana on any personal property of the contractor which is used in the business of the contractor and is

located within this state may be credited against the license fees required under this act. However, in computing the tax credit allowed by this act against the contractor's corporation license tax or income tax, the personal property tax credit against the licensee fees herein required shall not be considered as license fees paid for the purpose of such income tax or corporation license tax credit.

History: En. Sec. 4, Ch. 195, L. 1967.

84-3515. State department of revenue to establish rules and regulations. The state department of revenue shall establish rules and regulations necessary for the effective implementation of the provisions of this act, including, but not limited to, requiring public contractors to file a contractor's return showing public works contracts performed during a calendar year.

History: En. Sec. 5, Ch. 195, L. 1967;
amd. Sec. 145, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

84-3516. Failure to file contractor's license—penalty. A person failing to file a contractor's license return as provided and required by the state department of revenue, upon conviction, shall be fined not less than one thousand dollars (\$1,000) or more than ten thousand dollars (\$10,000).

History: En. Sec. 6, Ch. 195, L. 1967;
amd. Sec. 146, Ch. 516, L. 1973.

Effective Date

Section 7 of Ch. 195, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 28, 1967.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

CHAPTER 37—LICENSES—TRANSIENT RETAIL MERCHANTS

84-3702. (2429.2) Amount of license.

Cross-References

Multistate tax compact, sec. 84-6701.

CHAPTER 38—LEVY OF TAXES

Section

- 84-3803. Rate of taxation fixed by state department.
- 84-3804. Increase of state tax levy—support units of university.
- 84-3806. Failure of county commissioners to levy.
- 84-3808. Tax on personal property lien on realty—separate assessment.

84-3801. (2147) The levy.

Cross-References

Multistate tax compact, sec. 84-6701.

84-3803. (2149) Rate of taxation fixed by state department. The state department of revenue must, for state purposes, for each fiscal year fix an ad valorem rate of taxation upon each one hundred dollars of taxable property of the state, after allowing twelve per cent for delinquencies in the taxes and for costs of collection thereof, as will raise

a sufficient amount to meet the levy of the legislative assembly for each fiscal year.

History: En. Sec. 3824, Pol. C. 1895; re-en. Sec. 2597, Rev. C. 1907; re-en. Sec. 2149, R. C. M. 1921; amd. Sec. 147, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3713.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

84-3804. Increase of state tax levy—support units of university.

Upon the approval of the electors of this state, to be determined by their vote at the general election to be held in November of 1968, the legislative assembly shall levy a property tax of not more than six (6) mills on the taxable value of all real and personal property each year for ten (10) years beginning with the year 1969. All revenue from this property tax levy shall be appropriated for the support, maintenance, and improvement of the Montana university system.

History: En. Sec. 1, Ch. 50, L. 1967. Referendum No. 65, approved at election Nov. 5, 1968; amd. Sec. 52, Ch. 100, L. 1973; amd. Sec. 74, Ch. 405, L. 1973.

Amendments

Both 1973 amendments deleted "in addition to any levy authorized by section 9, article XII of the Montana constitution" after "levy a property tax" in the first sentence.

Temporary Provision

Chapter 478, Laws of 1973, levied 6 mills for each of the years 1973 and 1974.

Compiler's Notes

This section is substituted for Sec. 1, Ch. 218, Laws 1957 and given the same section number as it covers the same subject matter.

This section was amended twice in 1973, once by Ch. 100 and once by Ch. 405. The amendments were identical.

84-3806. (2151) Failure of county commissioners to levy. The action of the state department of revenue in fixing the rate of taxation for state purposes is, in the absence of action by the board of county commissioners, a valid levy of the rate so fixed, and imposes upon the county commissioners, and all other officers charged with the performance of any duties under the revenue law, the same obligations as if the board of county commissioners had made the levy at the proper time.

History: En. Sec. 3826, Pol. C. 1895; re-en. Sec. 2599, Rev. C. 1907; re-en. Sec. 2151, R. C. M. 1921; amd. Sec. 148, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3715.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-3808. (2153) Tax on personal property lien on realty—separate assessment. (a) and (b). * * * [Same as parent volume.]

(c). The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file in the office of the county treasurer of said county a notice giving;

(1) to (6). * * * [Same as parent volume.]

(d). Provided, that any owner of a mortgage on real estate upon which personal property taxes are by this act made a lien, and where the owner of such real estate and personal property has failed to pay taxes due upon such real estate and personal property for one or more years, may file with the department of revenue or its agent in the county in which such property is located a written request to have the personal property and real estate of the owner separately assessed. Such request must be made by registered mail at least ten (10) days prior to the first Monday

in March in the year for which property is assessed. Upon receipt by the department of revenue or its agent of such request, it is hereby made the duty of the department of revenue or its agent to make a separate assessment of real and personal property of the owner thereof and such personal taxes shall not be a lien upon the real estate so mortgaged of the owner thereof and the said personal property taxes shall be collected in the manner provided by law for other personal property.

History: En. Sec. 3828, Pol. C. 1895; re-en. Sec. 2601, Rev. C. 1907; re-en. Sec. 2153, R. C. M. 1921; amd. Sec. 1, Ch. 18, L. 1925; amd. Sec. 1, Ch. 113, L. 1927; amd. Sec. 1, Ch. 182, L. 1933; amd. Sec. 1, Ch. 119, L. 1935; amd. Sec. 1, Ch. 97, L. 1937; amd. Sec. 75, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3717.

Amendments

The 1973 amendment deleted "in the office of the county assessor and" following "shall file" in the preliminary clause of subsection (c); and substituted references to the department of revenue or its agent for references to the county assessor in subsection (d).

CHAPTER 39—UNIFORM FEDERAL TAX LIEN REGISTRATION ACT

(Repealed—Section 8, Chapter 228, Laws of 1967)

84-3901 to 84-3907. (2155.1 to 2155.7) Repealed.

Repeal

These sections (Secs. 1 to 7, Ch. 8, L. 1927), the Uniform Federal Tax Lien

Registration Act, were repealed by Sec. 8, Ch. 228, Laws 1967. For present law, see secs. 45-1501 to 45-1507.

CHAPTER 40—COMPUTATION AND ENTRY OF TAXES

Section

- 84-4001. Department of revenue or its agent to enter valuations on assessment book.
- 84-4002. County clerk to prepare duplicate statement.
- 84-4003. Statement to be transmitted to state auditor and state department of revenue.
- 84-4004. County clerk to follow directions of state department of revenue, county or state tax appeal boards.
- 84-4005. Department of revenue or its agent to compute and enter taxes—affidavit.
- 84-4006. County clerk's affidavit—delivery of book to department of revenue or its agent.
- 84-4013. State department of revenue may dispense with duplicate.

84-4001. (2156) Department of revenue or its agent to enter valuations on assessment book. Before delivering the assessment book to the county clerk as required by section 84-505 the department of revenue or its agent must proceed to add up the valuations, and enter the total valuation of each kind of property, and the total valuation of all property, on the assessment book. The column of acres must show the total acreage of the county.

History: En. Sec. 85, p. 105, L. 1891; re-en. Sec. 3840, Pol. C. 1895; re-en. Sec. 2604, Rev. C. 1907; re-en. Sec. 2156, R. C. M. 1921; amd. Sec. 1, Ch. 167, L. 1943; amd. Sec. 76, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3727.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "assessor."

84-4002. (2157) County clerk to prepare duplicate statement. The county clerk must, on or before the second Monday in August of each year, prepare from the assessment book of such year, as corrected by the department of revenue or its agent, duplicate statements, showing in separate columns:

1 to 6. * * * [Same as parent volume.]

History: En. Sec. 86, p. 105, L. 1891; re-en. Sec. 3841, Pol. C. 1895; re-en. Sec. 2605, Rev. C. 1907; re-en. Sec. 2157, R. C. M. 1921; amd. Sec. 77, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3728.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "board of county commissioners" in the preliminary paragraph.

84-4003. (2158) Statement to be transmitted to state auditor and state department of revenue. The county clerk must, as soon as such statements are prepared, transmit by mail, one to the state auditor and one to the state department of revenue.

History: En. Sec. 87, p. 105, L. 1891; re-en. Sec. 3842, Pol. C. 1895; re-en. Sec. 2606, Rev. C. 1907; re-en. Sec. 2158, R. C. M. 1921; amd. Sec. 149, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3729.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

84-4004. (2159) County clerk to follow directions of state department of revenue, county or state tax appeal boards. As soon as the county clerk receives from the state department of revenue, county or state tax appeal boards a statement of any change or changes made by the department or boards in the assessment books of the county, or in any assessment therein contained, he must make the corresponding change or changes in the assessment books, by entering the same in a column provided with a proper heading in the assessment books, counting any fractional sum, when more than fifty cents as one dollar, and omitting it when less than fifty cents, so that the value of any separate assessment shall contain no fractions of a dollar; but he must in all cases disregard any action of the county tax appeal board which is prohibited by section 84-413; provided, however, that if such assessment books are not in the possession of the county clerk at the time he receives any such statement, he must immediately make a copy thereof, attesting the same with his seal of office, and deliver such attested copy to the county or state officer then having possession of such assessment books, and it shall be the duty of such county or state officer to immediately make the corresponding change or changes in such assessment in the manner herein provided.

History: En. Sec. 88, p. 106, L. 1891; re-en. Sec. 3843, Pol. C. 1895; re-en. Sec. 2607, Rev. C. 1907; re-en. Sec. 2159, R. C. M. 1921; amd. Sec. 1, Ch. 86, L. 1929; amd. Sec. 78, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3730.

Amendments

The 1973 amendment substituted references to the department of revenue for

references to the state board of equalization; inserted references to the county and state tax appeal boards; substituted "county tax appeal board" for "board of county commissioners" before "which is prohibited by section 84-413" near the middle of the section; and inserted "or state" after "county" twice near the end of the section.

84-4005. (2160) Department of revenue or its agent to compute and enter taxes—affidavit. The department of revenue or its agent must then compute, and enter in a separate money column in the assessment book, the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated, and foot up the columns showing the total amount of such taxes, and the columns of total value of property in the county, and shall attach thereto his affidavit, by him subscribed as follows:

"I,, an agent of the department of revenue do swear that I have reckoned the respective sums due as taxes, and have added up the columns of valuations, taxes and acreage, as required by law, and the said assessment book to which this affidavit is affixed is full, true and correct, and made in the manner prescribed by law," and shall on or before the second Monday of October deliver the completed assessment book to the county clerk.

History: En. Sec. 89, p. 106, L. 1891; re-en. Sec. 3844, Pol. C. 1895; re-en. Sec. 2608, Rev. C. 1907; re-en. Sec. 2160, R. C. M. 1921; amd. Sec. 3, Ch. 167, L. 1943; amd. Sec. 79, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3731.

Amendments

The 1973 amendment substituted refer-

ences to the department of revenue or its agent for references to the county assessor; and deleted "as corrected under the direction of the county and state board of equalization" after "total value of property in the county" near the end of the preliminary paragraph.

84-4006. (2161) County clerk's affidavit—delivery of book to department of revenue or its agent. That within five (5) days after the second Monday in August the county clerk must attach to the book the following affidavit:

"I,, county clerk of the county of, do swear that I received the assessment book of the taxable property of the county from the department of revenue or its agent with his affidavit thereto affixed, and that I have corrected it and made it conform to the requirements of the county and state tax appeal boards," and deliver the book to the department of revenue or its agent.

History: En. Sec. 90, p. 107, L. 1891; re-en. Sec. 3845, Pol. C. 1895; re-en. Sec. 2609, Rev. C. 1907; re-en. Sec. 2161, R. C. M. 1921; amd. Sec. 9, Ch. 96, L. 1923; amd. Sec. 2, Ch. 167, L. 1943; amd. Sec. 80, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3732.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "county assessor" in two places; and substituted "tax appeal board" for "board of equalization" at the end of the affidavit.

84-4013. (2168) State department of revenue may dispense with duplicate. The state department of revenue may, by an order certified to the county clerk of any county in the state, dispense with the duplicate assessment book in such county, in which event the original assessment book must perform all the offices of such duplicate, and must have like force and effect.

History: En. Sec. 4019, Pol. C. 1895; re-en. Sec. 2737, Rev. C. 1907; re-en. Sec. 2168, R. C. M. 1921; amd. Sec. 81, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization"; and deleted "entered upon its minutes" following "by an order" near the beginning of the sentence.

CHAPTER 41—COLLECTION OF GENERAL PROPERTY TAXES—TAX SALES—REDEMPTION—TAX DEEDS—SALE OF TAX DEED LANDS

Section

84-4116. Statement to be transmitted to the state department of revenue by the county clerk.

84-4130. Lien of state when vests in purchaser—how alone divested.

84-4191. Terms of sale—sale contract—deed of conveyance.

84-4116. (2181) Statement to be transmitted to the state department of revenue by the county clerk. Within ten days after each settlement the

county clerk must transmit by mail a statement to the state department of revenue, in such form as it may require, of each kind of property assessed and delinquent, and the total amount of delinquent taxes.

History: En. Sec. 106, p. 109, L. 1891; re-en. Sec. 3872, Pol. C. 1895; re-en. Sec. 2623, Rev. C. 1907; re-en. Sec. 2181, R. C. M. 1921; amd. Sec. 7, Ch. 96, L. 1923; amd. Sec. 150, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3763.

Compiler's Notes

The compiler substituted "state depart-

ment of revenue" for "state board of equalization" in the text of this section.

Amendments

The 1973 amendment substituted "state department of revenue" for "state board of equalization" in the caption.

84-4130. (2197) Lien of state when vests in purchaser—how alone divested. On filing the certificate with the county clerk, the lien of the state vests in the purchaser, and is only divested by the payment to him or to the county treasurer for his use of the purchase money and two-thirds (2/3) of one per cent additional for each month that elapses from the date of the sale until redeemed.

History: En. Sec. 121, p. 112, L. 1891; re-en. Sec. 3888, Pol. C. 1895; re-en. Sec. 2644, Rev. C. 1907; re-en. Sec. 2197, R. C. M. 1921; amd. Sec. 1, Ch. 8, L. 1967.

Amendments

The 1967 amendment inserted "two-thirds (2/3) of" preceding "one per cent additional."

Extent of Lien

This section does not permit mortgagee who had previously purchased certificates of tax sale to retain a lien upon the real estate for the amount of certificates after sheriff's sale. *Stallings v. Erwin*, 148 M 227, 419 P 2d 480, 483.

Where, subsequent to purchase of tax certificates, mortgagee foreclosed the mortgage, the foreclosure sale cut off any lien asserted by mortgagee for taxes paid although the mortgage permitted the mortgagee to pay taxes and collect the same upon foreclosure. *Stallings v. Erwin*, 148 M 227, 419 P 2d 480, 483.

Lienholder's Right to Redeem

One who was occupier of land and assignee of tax sale certificate held lien on such land in accord with this section, and thus could redeem subsequent tax sale certificate at any time before application for tax deed. *State ex rel. Burkhartsmeier Bros. v. McCormick*, — M —, 510 P 2d 266.

84-4132. (2201) Time for redemption.

Right to Redeem

Occupier of land who was assignee of tax sale certificate held lien on such land under section 84-4130, and thus had right to redeem subsequent certificate at any time before notice and application for tax

deed. *State ex rel. Burkhartsmeier Bros. v. McCormick*, — M —, 510 P 2d 266.

References

United States v. Johnston, 247 F Supp 707.

84-4133. (2202) Redemption to be made in lawful money, etc.

Check as "Lawful Money"

Use of a check by the small business administration in the redemption of tax delinquent property by the United States constituted "lawful money" under this

section and certificate of redemption issued to the government four days before defendant filed application for tax deed was valid. *United States v. Johnston*, 247 F Supp 707.

84-4151. (2209) Notice of application for tax deed.

Delay in Redemption

Redeemer's delay of 58 days after receipt of notice under this section, or until two days before expiration of period, was not unreasonable and did not estab-

lish defense of laches in redeemer's mandamus suit. *State ex rel. Burkhartsmeier Bros. v. McCormick*, — M —, 510 P 2d 266.

84-4154. (2210) Redemption from tax sales.**References**

United States v. Johnston, 247 F Supp 707.

84-4158. (2214) Procedure in actions to quiet title to tax deed property.**Notice**

Since this section takes precedence over Rule 77(d) pursuant to Rule 81, RCivP, defendants were not entitled to notice of entry of quiet title decree in favor of petitioner where defendant, after hearing on order to show cause, failed to post the required bond. *Rosen v. Midkiff*, — M —, 519 P 2d 416.

Presumption of Posting of Notice

Mere fact that affidavit of posting of notice was not in court file did not overcome presumption that notice was posted since 93-1301-7(15) states that an official shall be presumed to have regularly performed his duty. *Rosen v. Midkiff*, — M —, 519 P 2d 416.

84-4191. Terms of sale—sale contract—deed of conveyance. Such sale shall be made for cash or, in the case of real property, on such terms as the board of county commissioners may approve; provided, however, that if such sale is made on terms at least twenty per cent (20%) of the purchase price shall be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed five (5) years and all such deferred payments shall bear interest at the rate of eight per cent (8%) per annum.

If a sale is made on terms, the chairman of the board of county commissioners shall execute a contract containing such terms as shall be provided by a uniform contract prescribed by the board of equalization and upon payment of the purchase price in full together with all interest which may become due on any installment or deferred payments, the chairman of the board of county commissioners shall execute a deed attested to by the county clerk to the purchaser, or his assigns, or such other instruments as shall be sufficient to convey all of the title of the county in and to the property so sold, provided that the county may in the discretion of the board of county commissioners reserve not to exceed six and one-fourth per cent (6¼%) royalty interest in the oil, gas, other hydrocarbons and minerals produced and saved from said land.

History: En. Sec. 2, Ch. 171, L. 1941; amd. Sec. 1, Ch. 187, L. 1949; amd. Sec. 1, Ch. 163, L. 1969.

Amendments

The 1969 amendment increased the deferred payment interest rate from "four per cent (4%)" per annum to "eight per cent (8%)."

Effective Date

Section 2 of Ch. 163, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

Mineral Rights Reservation

County has implied power under proviso of this section to make mineral reservation in deeds to tax-title lands sold by it. *Smith v. County of Musselshell*, 155 M 376, 472 P 2d 878.

In action to determine rights under deed, evidence that all parties to county's deed regarded reservation in deed as royalty interest and not mineral interest and language in deeds that "all minerals contained in and hereafter mined, produced, extracted, or otherwise taken" supported finding that such reservation was royalty interest. *Superior Oil Co. v. Vanderhoof*, 307 F Supp 84.

84-4196. Confirmation of oil and gas leases heretofore made.**Reservation of Royalty Interest**

In action to determine rights under deed, evidence that all parties to county's deed

regarded reservation in deed as royalty interest and not mineral interest and language in deeds that "all minerals con-

tained in and hereafter mined, produced, extracted, or otherwise taken" supported finding that such reservation was royalty interest. *Superior Oil Co. v. Vanderhoof*, 307 F Supp 84.

CHAPTER 42—COLLECTION OF PERSONAL PROPERTY TAXES NOT A
LIEN ON REAL ESTATE—ROAD AND POOR TAXES

Section

84-4201. Duty of department of revenue or its agent.

84-4202. Duty of treasurer.

84-4211. Department of revenue or its agents to note report of property.

84-4201. (2238) Duty of department of revenue or its agent. It shall be the duty of the department of revenue or its agent, upon discovery of any personal property in the county, the taxes upon which are not a lien upon real property sufficient to secure the payment of such taxes, to immediately, and in any event not more than five days thereafter, make a report to the treasurer, setting forth the nature, kind, description and character of such property in such a definite manner that the treasurer can identify the same, the amount and assessed valuation of such property, where the same is located, the amount of taxes due thereon, and the name and address of the owner, claimant, or other person in possession of the same. Where such personal property is located in any city or town, which shall have provided by ordinance for the collection of its taxes for general, municipal and administrative purposes by its city or town treasurer, also and at the same time furnish to said city or town treasurer a duplicate of such notice to the county treasurer. For the purpose of determining the taxes due on such personal property, the department or its agent must use the levy made during the previous year.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2683, Rev. C. 1907; re-en. Sec. 2238, R. C. M. 1921; amd. Sec. 1, Ch. 102, L. 1923; amd. Sec. 1, Ch. 24, L. 1925; amd. Sec. 1, Ch. 143, L. 1929; amd. Sec. 1, Ch. 6, L. 1939; amd. Sec. 1, Ch. 136, L. 1943; amd. Sec. 1, Ch. 23, L. 1951; amd. Sec. 82, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3820.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "assessor" near the beginning of the first sentence and in the third sentence; and deleted "in his opinion" before "a lien upon real property" near the beginning of the first sentence.

84-4202. (2239) Duty of treasurer. The county treasurer must collect taxes on all personal property, and in the case provided in the preceding section, it shall be the duty of the treasurer immediately upon receipt of the report prescribed by section 84-4201, R. C. M. 1947, to notify the person or persons against whom the tax is assessed that the amount of such tax is due and payable at the county treasurer's office. The county treasurer must, at the time of receiving the report, and in any event within thirty (30) days from the receipt of such report, levy upon and take into his possession such personal property against which a tax is assessed, or any other personal property in the hands of the delinquent taxpayer, and proceed to sell the same, in the same manner as property is sold on execution by the sheriff, and the county treasurer may for the purpose of making such levy and sale, direct the sheriff to make such levy and sale, and the sheriff, undersheriff, or any deputy sheriff of such county is, ex officio, a deputy county treasurer for such purposes, and either may act and receive payment of such taxes. Such sheriff shall be entitled to receive the same fees as he is entitled to in making a seizure and sale under execution.

The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the willful failure and neglect of such treasurer to levy upon and sell such personal property for the taxes levied thereon.

The tax on such personal property may be collected and the payment thereof enforced by the seizure and sale of any personal property in the possession of the person assessed at any time after the date the assessment is made or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any or all of the methods herein provided for may be used until the full amount of such tax is collected.

The county shall have a general lien, dependent on possession, upon any moneys in its possession belonging to any taxpayer, for any amounts due said county for any delinquent personal property taxes not a lien on real estate, of said taxpayer; provided, however, that due notice must be given the lien holder, if any.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R. C. M. 1921; amd. Sec. 2, Ch. 102, L. 1923; amd. Sec. 1, ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963; amd. Sec. 83, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3821.

Amendments

The 1973 amendment substituted "report prescribed by section 84-4201, R. C. M. 1947," for "report from the assessor" near the end of the first sentence in the first paragraph; and deleted "assessor's" following "at the time of receiving the" near the beginning of the second sentence in the first paragraph.

84-4211. (2251) Department of revenue or its agent to note report of property. The department of revenue or its agent must note on the assessment book opposite the names of each person owning, claiming, or possessing such personal property which may be so reported by him to the treasurer, the fact that such report was made to the treasurer, and the date when the same was so made.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2690, Rev. C. 1907; re-en. Sec. 2251, R. C. M. 1921; amd. Sec. 84, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "assessor" at the beginning of the section.

CHAPTER 44—SETTLEMENT WITH STATE AUDITOR AND TREASURER

84-4403 to 84-4405. (2265 to 2267) Repealed.

Repeal

These sections (Secs. 4000 to 4002, Pol. C. 1895), relating to examination of tax

collectors' books, were repealed by Sec. 23, Ch. 249, Laws 1967.

CHAPTER 45—PROTEST PAYMENT OF TAXES—ACTION TO RECOVER

Section

84-4502. Payment of taxes under protest—action to recover.

84-4503. Assessment for taxation—increase over statement of owner.

84-4502. (2269) Payment of taxes under protest—action to recover.

(1) In all cases of levy of taxes, licenses or other demands for public

revenue which are deemed unlawful by the party whose property is thus taxed, or from whom such tax or license is demanded or enforced, such party may before such tax or license becomes delinquent pay under written protest such tax or license, or any part thereof, deemed unlawful, to the officers designated and authorized to collect the same, specifying the grounds of protest; and thereupon the party so paying, or his legal representatives, may bring an action in any court of competent jurisdiction against the officers to whom said license or tax was paid, or against the county or municipality in whose behalf the same was collected, and the state department of revenue, which shall be served with summons and copy of the complaint, to recover such tax or license, or any portion thereof, paid under protest; provided, that any action instituted to recover any license or tax paid under protest shall be commenced and summons served within sixty (60) days after the date of payment of the same; provided further, that when any such license or tax is payable in installments the first installment, or so much thereof as may be deemed unlawful, may be so paid under written protest and suit commenced and summons served to recover the same within the time herein prescribed, and if any subsequent installment of such license or tax shall become due or payable before the final determination of the suit commenced to recover the first installment, or portion thereof, so paid under protest, then such subsequent installment, or portion thereof deemed unlawful, may also be paid under written protest, and no suit or action need be commenced to recover the same, but the determination of the suit or action commenced to recover the first installment, or portion thereof, paid under protest, shall determine the right of the party paying such subsequent installment to have the same, or any part thereof refunded to him. All such licenses and taxes, when so paid under protest, shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as protest fund, and no part thereof shall be paid over to any officer, or placed in any other fund or used for any purpose whatever, but the whole thereof shall be retained in such protest fund until the final determination of any suit or action to recover the same.

(2). * * * [Same as parent volume.]

History: Ap. p. 4024, Pol. C. 1895; amd. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2742, Rev. C. 1907; amd. Sec. 1, Ch. 135, L. 1909; re-en. Sec. 2269, R. C. M. 1921; amd. Sec. 1, Ch. 142, L. 1925; amd. Sec. 1, Ch. 204, L. 1955; amd. Sec. 151, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the middle of the first sentence of subsection (1).

84-4503. (2270) Assessment for taxation—increase over statement of owner. Whenever any person has delivered to the department of revenue or its agent a sworn statement of his property subject to taxation as now provided by law, and giving the estimated value of such property, and the department or its agent shall increase such estimated value, or add other property to such assessment list, the agent shall, at least ten days prior to the meeting of the county tax appeal board, give to such person written notice of such change which notice shall be substantially in the following form:

(Date)

Mr.

A change has been made in your assessment list as follows:
(Set out and describe specifically changes made in list.)

....., Agent

Department of Revenue

Such person may then appear before the county tax appeal board and contest the same; and if the assessment of any such person has been added to or changed, either by the department of revenue or by the county tax appeal board, and such person has not been notified thereof and given an opportunity to contest the same before the county tax appeal board, the tax on such increased value or added property shall, upon such facts being established, be adjudged by the court to be void, and such facts and all questions relating thereto, when said tax has been paid under protest, may be heard and determined in the action provided for in section 84-4502. When any person has appeared before the county tax appeal board and has contested the increase in the estimated value of his property, or the addition of other property to his assessment list, and has appealed to the state tax appeal board from any action or decision with reference thereto by the county tax appeal board and such person is aggrieved at the final action of the state tax appeal board in making or allowing such increase or addition, he may pay the tax on such increase or addition or the installments thereof if payable in installments, under protest in the manner provided by section 84-4502, and thereupon, and within the time prescribed and in the manner provided by said section 84-4502, may commence an action to recover such tax, or installments, and in such action contest and litigate the payment of such taxes on such increased value or added property, on the same grounds and for the same reasons that he has contested the same before the county and state tax appeal boards, and for no other reasons and on no other grounds; provided, that all of the provisions of section 84-4502 for the retention or refunding of taxes paid under protest shall apply to taxes paid under protest under this section.

History: En. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2743, Rev. C. 1907; amd. Sec. 2, Ch. 135, L. 1909; re-en. Sec. 2270, R. C. M. 1921; amd. Sec. 1, Ch. 142, L. 1925; amd. Sec. 85, Ch. 405, L. 1973.

ences to the department of revenue or its agent for references to the county assessor; and substituted references to the county and state tax appeal boards for references to the county and state boards of equalization.

Amendments

The 1973 amendment substituted refer-

CHAPTER 46—BANKS—TAXATION

Section

- 84-4604. Statements to be furnished by officers.
- 84-4605. Taxation of banks and shares of stock in.
- 84-4606. Banks with offices in more than one county—assessment and apportionment of tax.

84-4604. (2066) Statements to be furnished by officers. The cashier of every national bank shall make and deliver to the department of reve-

nue or its agent in the county in which said bank is located, within five days after demand therefor, a statement, verified by his oath, showing the name of each shareholder, with his residence and the number of shares belonging to him at the close of business the day next preceding the first Monday in March, in each year, as the same then appeared on the books of said bank, and showing the face value of the capital stock, and the amount of surplus and undivided profits of said bank, and an estimate of the value for which such stock shall be assessed. If said cashier fails to make such statement as required, the department of revenue or its agent shall forthwith obtain said information from the officers of the bank and for this purpose shall have access to the books of the bank, and the department or its agent shall therefor make an assessment of such stock, which shall be as fair and equitable as can be made from the best information available, or the figures disclosed by any prior report of the officers or directors of the bank, made to any state or federal officer to whom such bank is by law required to make reports, may be adopted.

History: En. Sec. 3, Ch. 81, L. 1921; re-en. Sec. 2066, R. C. M. 1921; amd. Sec. 86, Ch. 405, L. 1973.

ences to the department of revenue or its agent for references to the county assessor; and made minor changes in phraseology.

Amendments

The 1973 amendment substituted refer-

84-4605. (2067) Taxation of banks and shares of stock in. (1) Every state bank or banking corporation located and doing business in this state, and every private banker doing business in this state, shall be taxable upon the value of all real estate and personal property owned by such bank, banking corporation or private banker, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained as provided by section 84-301; and the cashier or secretary of every such bank or banking corporation, and every such private banker, shall furnish to the department of revenue or its agent in the county in which its or his bank is located, within five days after demand therefor, a statement verified by his oath, showing all the resources and liabilities of such bank as disclosed by its books, at twelve o'clock noon on the first Monday of March in each year; if such cashier, secretary or private banker shall fail to make the statement hereby required, the department or its agent shall forthwith obtain such information from any other available source, and for this purpose shall have access to the books of such bank, banking corporation or private banker. The department or its agent shall thereupon make an assessment of the real estate and personal property owned by such bank, banking corporation or private banker, and of the moneyed capital employed in the business of such bank, banking corporation or private banker, which assessment shall be as fair and equitable as can be made from the best information available or, for the purpose of said assessment the figures disclosed by any prior report made by such bank, banking corporation or private banker to any state or federal officer pursuant to any state or federal law may be adopted. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

(2). * * * [Same as parent volume.]

(3) The cashier or secretary of any such bank or banking corporation shall furnish to the department or its agent, upon demand, the name of each stockholder with his residence and the number of shares belonging to him at twelve o'clock noon of the first Monday in March of each year; and if such cashier or secretary, for more than five days after such demand, shall fail to furnish such information, he shall be guilty of a misdemeanor and the department or its agent may obtain such information from any other available source, and for such purposes shall have access to the books of such bank or banking corporation. For convenience the assessment of such shares shall be entered on the personal property assessment list under the name of the bank or banking corporation concerned, but in the assessment list the names of the owners of such shares shall be set forth and the number of shares owned by each, and such assessment, when so entered, shall have all the force and effect as if made in the names of the owners of such shares individually. The bank or banking corporation in which such shares are owned shall be liable for the payment of taxes assessed against such shares, and such taxes shall be payable by and may be collected from such bank or banking corporation in the same manner and under the same penalties as other taxes; provided that such bank or banking corporation may recover from such owners of shares any taxes so paid on such shares, and shall have a lien therefor upon such shares and upon any dividends accrued or to accrue thereon.

History: En. Sec. 4, Ch. 81, L. 1921; re-en. Sec. 2067, R. C. M. 1921; amd. Sec. 1, Ch. 64, L. 1927; amd. Sec. 87, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor; and made minor changes in style and phraseology.

84-4606. Banks with offices in more than one county—assessment and apportionment of tax. Any state or national bank, banking corporation, or private bank, the stock, moneyed capital, or moneys and credits of which are subject to taxation under the provisions of chapter 3 and chapter 46, Title 84, Revised Codes of Montana, 1947, and which has banking offices in more than one (1) county, shall furnish to the department of revenue or its agent in each such county the information required of it by chapter 46, Title 84, Revised Codes of Montana, 1947, together with a statement of the book value of real estate owned and located in the respective counties and a statement of the deposit liability shown by the books of account of said bank at each of its said banking offices at the close of business the day next preceding the first Monday in March; and the aggregate tax on the stock, moneyed capital, and moneys and credits of such bank computed as provided by law shall be assessed by and be paid to the respective counties in the proportion which the amount of the deposit liability shown on the books of the office or offices of such bank located in such counties, respectively, shall bear to the total deposit liability of such bank.

History: En. Sec. 1, Ch. 72, L. 1967; amd. Sec. 88, Ch. 405, L. 1973.

Title of Act

An act relating to the assessment for

the purpose of taxation of bank stock, moneyed capital, and moneys and credits, in each county wherein a bank office is located and the payment of taxes thereon; providing for the furnishing of certain information to the county assessor of each such county by the bank officials and repealing all acts and parts of acts in conflict herewith.

Amendments

The 1973 amendment substituted references to the department of revenue or

its agent for references to the county assessor.

Repealing Clause

Section 2 of Ch. 72, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 72, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 20, 1967.

CHAPTER 47—CITIES AND TOWNS—TAXATION AND LICENSE

Section

- 84-4701. Limitation on amount of tax for municipal purposes—distribution of funds—levy for park, swimming pools, playgrounds, youth centers and other purposes.
- 84-4701.1. All-purpose levy authorized.
- 84-4701.2. Maximum rate of all-purpose levy.
- 84-4701.3. Allocation of all-purpose levy.
- 84-4701.5. Certification of all-purpose levy to county officers.
- 84-4701.6. Extraordinary levies—additional to all-purpose levy.
- 84-4713. Taxes in cities and towns which have exceeded the statutory limit of indebtedness.
- 84-4715. Annual tax—levy and collection.
- 84-4716. Levy, etc., to be made under this chapter.
- 84-4717. Basis of taxation.
- 84-4718. Duty of department of revenue.
- 84-4719. Copies of assessment books to be furnished cities and towns.
- 84-4720. Charge of department for making copies.
- 84-4721. Equalization of taxes.
- 84-4726.1. Municipal sewer rates—collection—arrearages.

84-4701. (5194) Limitation on amount of tax for municipal purposes—distribution of funds—levy for park, swimming pools, playgrounds, youth centers and other purposes. The amount of taxes to be assessed and levied for general municipal or administrative purposes in cities and towns must not exceed two and four-tenths (2.4%) per centum on the per centum of the assessed value of the taxable property of the city or town; and the council or commission in each city or town may distribute the money collected into such funds as are prescribed by ordinance; provided, that for the purpose of procuring, equipping and maintaining public parks, swimming pools, skating rinks, playgrounds, civic centers, youth centers, museums and combinations thereof, the council or commission in any city or town may assess and levy, in addition to the said levy for general municipal or administrative purposes, not exceeding seven (7) mills on the dollar on the per centum of the assessed value of the taxable property of the city or town.

History: Ap. p. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917; re-en. Sec. 5194, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1923; amd. Sec. 1, Ch. 175, L. 1925; amd. Sec. 1, Ch. 48, L. 1937; amd. Sec. 4, Ch. 71, L. 1945; amd. Sec. 1, Ch. 192, L.

1951; amd. Sec. 1, Ch. 230, L. 1969. Cal. Pol. C. Sec. 4371.

Amendments

The 1969 amendment substituted "two and four-tenths (2.4%) per centum" for "two (2%) per centum" after "must not exceed" near the beginning of the section, and "seven (7) mills" for "six (6) mills"

after "not exceeding" near the end of the section.

Cross-References

Multistate tax compact, sec. 84-6701.

Allocation of Construction Cost

City has general budgetary authority

in financing construction of city shop complex and has implied power to allocate proportionate share of costs among various city departments using the facility. *Greener v. City of Great Falls*, 157 M 376, 485 P 2d 932.

84-4701.1. All-purpose levy authorized. It is the purpose of this act to authorize and empower the cities and towns of the state of Montana, at their option, to make an all-purpose annual mill levy in lieu of the multiple levies now authorized by the statutes of the state of Montana. The all-purpose mill levy shall not include the levies imposed for bonded indebtedness, to pay judgments, or special improvement district revolving funds of municipalities, which levies may be made in addition to the all-purpose levy as provided in section 84-4701.6, R. C. M., 1947. This act shall not be construed as repealing those statutes providing for multiple separate levies.

History: En. Sec. 1, Ch. 82, L. 1965; amd. Sec. 1, Ch. 226, L. 1969; amd. Sec. 1, Ch. 375, L. 1971.

Amendments

The 1969 amendment deleted "exclusive"

before "annual mill levy"; and inserted the second sentence.

The 1971 amendment inserted "or special improvement district revolving funds of municipalities" in the second sentence and made minor changes in phraseology.

84-4701.2. Maximum rate of all-purpose levy. Notwithstanding the provisions of the statutes of Montana to the contrary, the cities and towns of the state of Montana may make an all-purpose annual levy upon the assessed value of all the taxable property in such cities and towns, for municipal purposes in lieu of the multiple levies now authorized by statute. The total of such all-purpose levy shall not exceed sixty-five (65) mills on the dollar, which levy shall not include any levies necessary for bonded indebtedness, judgments, or special improvement district revolving in addition to all-purpose levy as provided in sections 84-4701.1 and 84-4701.6. The moneys received from such all-purpose levy shall be accounted for in a common fund known as the all-purpose general fund.

An amount not to exceed five per centum (5%) of the moneys received from and as a part of the all-purpose levy aforesaid may be placed in a separate fund known as the capital improvement program fund to be earmarked for the replacement and acquisition of property, plant or equipment costing in excess of five thousand dollars (\$5,000) with a life expectancy of five (5) years or more; provided that a capital improvement program has been formally adopted by city or town ordinance.

The moneys held in the capital improvement program fund shall, whenever possible, be invested in savings or time deposits in a state or national bank insured by the federal deposit insurance corporation or in direct obligations of the United States government and credited back to the fund plus interest earned.

History: En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971.

Amendments

The 1969 amendment substituted "an

all-purpose annual levy" for "an all-purpose and exclusive annual levy which does not exceed the average number of mills on the dollar levied for all purposes in the preceding three (3) years"; and added the second sentence.

The 1971 amendment substituted "all-purpose" for "multiple" in the second sentence of the first paragraph; increased the maximum levy specified in the second sentence of the first paragraph from 60 to 65 mills; inserted "or special improvement

district revolving" in the second sentence of the first paragraph; added the last sentence to the first paragraph; added the second and third paragraphs; and made minor changes in phraseology.

84-4701.3. Allocation of all-purpose levy. In the event the all-purpose levy method, provided for in section 84-4701.2, is followed in municipal financing any municipality following it shall appropriate the levy to the several departments of the municipality in its annual budget and appropriation ordinance, or in other legal manner, as the governing body of such municipality shall deem best, provided, however, that any municipality which has adopted an urban renewal plan, may allocate the funds raised by its levy within the urban renewal area, in accordance with the provisions of its urban renewal plan.

History: En. Sec. 3, Ch. 82, L. 1965; amd. Sec. 3, Ch. 375, L. 1971; amd. Sec. 6, Ch. 287, L. 1974.

Amendments

The 1971 amendment substituted "ap-

propriate" for "allocate"; and deleted "on a mill basis" after "the levy."

The 1974 amendment added the proviso at the end of the section pertaining to the allocation of funds by a municipality which has adopted an urban renewal plan.

84-4701.5. Certification of all-purpose levy to county officers. In the event that it is necessary to certify such a municipal levy to county officers for collection, the same shall be certified as an all-purpose levy.

History: En. Sec. 5, Ch. 82, L. 1965; amd. Sec. 4, Ch. 375, L. 1971.

all-purpose levy" for "a single levy for general fund purposes" at the end of the section.

Amendments

The 1971 amendment substituted "an

84-4701.6. Extraordinary levies—additional to all-purpose levy. That otherwise authorized extraordinary levies to pay for bonded indebtedness, judgments, or special improvement district revolving funds may be made by such municipalities in addition to such all-purpose levy provided in sections 84-4701.1, 84-4701.2, 84-4701.3, 84-4701.4 and 84-4701.5 of the Revised Codes of Montana, 1947.

History: En. 84-4701.6 by Sec. 1, Ch. 145, L. 1967; amd. Sec. 5, Ch. 375, L. 1971.

Title of Act

An act to provide for authorized extraordinary levies to service and pay bonded indebtedness of such municipalities and to pay judgments obtained against them, may be made by such municipalities in addition to such all-purpose levy; and repealing all acts and parts of acts in conflict herewith.

Amendments

The 1971 amendment inserted "or special improvement district revolving funds" and made minor changes in phraseology.

Repealing Clause

Section 2 of Ch. 145, Laws 1967 repealed all acts and parts of acts in conflict therewith.

84-4712. (5200) Special taxes and assessments.

Compiler's Notes

Sections 44-301 to 44-303, referred to in

this section in the parent volume, were repealed by Sec. 12, Ch. 260, Laws 1967.

84-4713. (5201) Taxes in cities and towns which have exceeded the statutory limit of indebtedness. All taxes heretofore levied and collected, or to be collected for municipal and administrative purposes by any city

or town, the indebtedness of which equals or exceeds the limit provided in statute, may be used in payment of current expenses during the fiscal year for which said taxes were levied, the same as though a special levy had been made for each of said purposes. And the council of any such city or town is hereby authorized to designate the amount of said general levy applicable to each of said purposes, and the amount so designated shall constitute a special fund for the special purpose of paying the expenses incurred for such purpose, and such expenses shall be payable out of such fund and not otherwise; provided, that the aggregate of all taxes authorized for general municipal and administrative purposes shall not exceed one and one-half per cent annually upon the per centum of the assessed value of all taxable property in such city or town.

History: En. Sec. 1, Ch. 106, L. 1907; Sec. 3344, Rev. C. 1907; re-en. Sec. 5201, R. C. M. 1921; amd. Sec. 2, Ch. 175, L. 1925; amd. Sec. 53, Ch. 100, L. 1973; amd. Sec. 89, Ch. 405, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 100 and once by Ch. 405. Since the amendments conflict, the compiler has used the language in Ch. 405, the later enactment.

84-4715. (5203) Annual tax—levy and collection. The council has power to levy, and collect, annually taxes on all the property in the city or town taxable for state and county purposes, and may by ordinance provide for the levy and collection of the same.

History: En. Sec. 4860, Pol. C. 1895; re-en. Sec. 3346, Rev. C. 1907; re-en. Sec. 5203, R. C. M. 1921; amd. Sec. 90, Ch. 405, L. 1973.

Amendments

Chapter 100, Laws of 1973, substituted "five per cent (5%) of the value of the taxable property therein" for "the limit provided in section 6, article XIII of the constitution" in the first sentence.

Chapter 405, Laws of 1973, substituted "the limit provided in statute" for "the limit provided in section 6, article XIII of the constitution" in the first sentence.

84-4716. (5204) Levy, etc., to be made under this chapter. Until the passage of such ordinance the levy and collection of municipal taxes are, and the proceedings for such purposes must be as provided in this chapter.

History: En. Sec. 4861, Pol. C. 1895; re-en. Sec. 3347, Rev. C. 1907; re-en. Sec. 5204, R. C. M. 1921; amd. Sec. 91, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted "equalize" after "collect"; and deleted "assessment, equalization" following "provide for the levy."

84-4717. (5205) Basis of taxation. The assessment made by the department of revenue or its agent for state and county purposes is the basis of taxation for cities and towns for the property situated therein.

History: En. Sec. 4862, Pol. C. 1895; re-en. Sec. 3348, Rev. C. 1907; re-en. Sec. 5205, R. C. M. 1921; amd. Sec. 92, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted "assessment, equalization," following "the levy"; and made a minor change in punctuation.

84-4718. (5206) Duty of department of revenue. It is the duty of the department of revenue or its agent, in making the assessment book, to designate therein the real and personal property, stating each separately and distinctly, situated in cities and towns within each county in the state.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "county assessor."

History: En. Sec. 377, 5th Div. Comp. Stat. 1887; amd. Sec. 4863, Pol. C. 1895; re-en. Sec. 3349, Rev. C. 1907; re-en. Sec. 5206, R. C. M. 1921; amd. Sec. 93, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "county assessor"; and substituted "each county in the state" for "the county" at the end of the sentence.

84-4719. (5207) Copies of assessment books to be furnished cities and towns. On or before the second Monday in July of each year the department or its agent must furnish to all cities of the third class and towns within each county which shall make written request for the same, on or before the first Monday in April of each year, a complete certified copy of the assessment book, so far as such assessment book pertains to property within the limits of said cities and towns.

History: En. Sec. 1, Ch. 69, L. 1911; re-en. Sec. 5207, R. C. M. 1921; amd. Sec. 94, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department or its agent" for "assessor"; and made minor changes in phraseology.

84-4720. (5208) Charge of department for making copies. The department may charge such cities and towns five cents per folio of one hundred words for each copy of the assessment book furnished such cities and towns as provided in the preceding section.

History: En. Sec. 2, Ch. 69, L. 1911; re-en. Sec. 5208, R. C. M. 1921; amd. Sec. 95, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department" for "assessor"; and made a minor change in phraseology.

84-4721. (5209) Equalization of taxes. The equalization of assessments of property made by the state department of revenue applies to the assessment of property in any city or town, and must be taken as the equalization thereof.

History: En. Sec. 4865, Pol. C. 1895; re-en. Sec. 3351, Rev. C. 1907; re-en. Sec. 5209, R. C. M. 1921; amd. Sec. 96, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "state department of revenue" for "county board of equalization"; and deleted a second sentence authorizing the reduction or re-funding of city or town taxes.

84-4726.1. Municipal sewer rates—collection—arrearages. The council of any city or town operating a municipal sewer system may fix by ordinance the rates for service charges in advance or otherwise. The rates shall be uniform for like service in all parts of the municipality and shall be as nearly as possible equitable in proportion to the services and benefits rendered. An original charge for the connecting sewer line between the lot line and the sewer main may be assessed when such connecting sewer line is installed. The charges shall be collected by the treasurer.

On or before January 15 of each year, notice shall be given by the city or town treasurer to the owners of all lots or parcels of real estate to which sewer service has been furnished prior to January 1, by the city or town, and said notice shall specify the assessment owing and in arrears at the time of giving such notice. Such notice shall be in writing and shall state the amount of such arrearage, including any penalty and interest

assessed pursuant to the provisions of the city or town ordinance; that unless the same is paid by July 1 thereafter, the same will be levied as a tax against the lot or parcel of real estate to which sewer service was furnished and for which payment is delinquent as above specified. Such notice may be delivered to such owner personally, or by letter addressed to such owner at the post-office address of such owner as recorded in the office of the county assessor.

On March 1, the treasurer of the city or town shall certify and file with the county assessor a list of all lots or parcels of real estate, giving the legal description thereof, to the owners of which notices of arrearage in payments were given as above specified and which arrearage still remain unpaid, and stating the amount of such arrearage, including any penalty and interest. The county assessor shall insert the same as a tax against such lot or parcel of real estate. Provided, that in cities where the council has provided by ordinance for the collection of taxes, the city treasurer shall insert such delinquent amount, including penalty and interest, as a tax against the lot or parcel of real estate to which sewer service was furnished and payment for which is delinquent.

History: En. 84-4726.1 by Sec. 1, Ch. 411, L. 1973.

Title of Act

An act providing for collection of service charges by cities and towns operating a municipal sewer system; giving of no-

tice to owners of real estate of delinquency in payment of service charges; and certification to the county assessor of real estate upon which service charges remain unpaid; and adding a new section 84-4726.1, R. C. M. 1947.

84-4732 to 84-4735. (5219 to 5222) Repealed.

Repeal

Sections 84-4732 to 84-4735 (Sec. 436, 5th Div. Comp. Stat. 1887; Secs. 4875 to 4878, Pol. C. 1895; Sec. 1, pp. 224, 225,

L. 1897; Sec. 1, Ch. 47, L. 1937), relating to the road poll tax, were repealed by Sec. 120, Ch. 405, Laws 1973.

CHAPTER 48—FREIGHT LINE COMPANIES—TAXATION

Section

- 84-4818. Definitions.
- 84-4819. Rate of tax—*situs*.
- 84-4820. Railroad companies to withhold tax, file statements annually and remit to state—receipts—investigations—*ad valorem* tax basis.
- 84-4821. Notice of incorrectness or insufficiency—procedure upon failure to file report.
- 84-4822. *Ad valorem* tax basis—complaints—notice—testimony—hearing—refunds—valuation of cars as unit.
- 84-4823. Penalty for nonpayment by railroad company.
- 84-4824. Actions to recover delinquent taxes and penalties—additional taxes.
- 84-4825. Disposition of moneys—limitation of actions.
- 84-4826. Failure to file report—estoppel to impeach department of revenue's determination.

84-4818. Definitions. The following words and phrases, when used in this act, shall have the following definitions:

- (a). * * * [Same as parent volume.]
- (b) Department. The term "department" shall mean the state department of revenue of the state of Montana.
- (c). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 137, L. 1949; amd. Sec. 152, Ch. 516, L. 1973.

division (b) for a subdivision defining "board" as the state board of equalization.

Amendments

The 1973 amendment substituted sub-

84-4819. Rate of tax—situs. Every such freight line company shall pay annually for each calendar year a sum in the nature of a tax in the amount of five and one-half per cent ($5\frac{1}{2}\%$) of the total gross earnings received from all sources by reason of the use or operation of such cars within this state by such freight line company, which shall be in lieu of all other taxes upon such property of any freight line company so paying the same; provided, for the purpose of taxation, all cars used exclusively within the state or used partially within and partially without the state, are hereby declared to have situs within the state, the value thereof for such taxation to be determined as provided for in this act.

History: En. Sec. 2, Ch. 137, L. 1949; amd. Sec. 1, Ch. 346, L. 1969.

from "five per cent (5%)" to "five and one-half per cent ($5\frac{1}{2}\%$)" per year.

Amendments

The 1969 amendment raised the tax rate

Cross-References

Multistate tax compact, sec. 84-6701.

84-4820. Railroad companies to withhold tax, file statements annually and remit to state—receipts—investigations—ad valorem tax basis. Every railroad company so using or leasing said cars, upon payment therefor to such company shall withhold from such payment five and one-half per cent ($5\frac{1}{2}\%$) of as much thereof as shall constitute gross earnings of such freight line company within this state. On or before March 1, 1970, such railroad company shall make and file with the department a consolidated statement in a form to be prescribed by the department of revenue, showing the amount of such payments for the next preceding calendar year ending December 31, 1969, and the amounts so withheld and due the state of Montana. A like report shall be made on or before March 1 of each year thereafter; provided, however, that for good cause the department may grant a reasonable extension for filing, but not to exceed thirty (30) days. Such railroad company at the time of filing such statement shall remit the amounts so withheld and due the state of Montana. Upon receipt of such payment, the department shall issue its receipt, in triplicate, one (1) copy of which shall be mailed to such railroad company, one (1) to the freight line company for which such tax is paid, and one (1) to be retained in the office of the state department of revenue. The mailing of such receipt to such freight line company shall constitute notice of the filing of said statement and payment of said tax. If any railroad company shall fail to make or file such report, or if the state department of revenue be dissatisfied with any report filed, the department of revenue shall have the power to conduct a hearing and investigation for the purpose of ascertaining from whatever sources to which it has access, the gross earnings of such freight line company from the use or operation of such cars within the borders of this state, and in conducting such hearing and investigation, the department of revenue shall have power, by subpoena, to require officers, agents, employees or

receivers of such railroad company, or of such freight line company, to attend before the state department of revenue, and to bring with him, or them, for inspection by the department, any books, papers, or documents in his or their possession, or under his or their control, in any manner affecting said tax, and to testify under oath concerning any matter relating to the organization or business of such freight line company within this state. Any person who shall fail, neglect or refuse to attend before the department, when subpoenaed so to do, or who shall fail, neglect, or refuse to bring with him and submit for inspection by the department any books, papers, or documents in his possession or under his control affecting the organization or business of such freight line company within this state, or who shall refuse to testify, or refuse to answer any question which may be asked him concerning the organization or business, shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or be imprisoned in the county jail for not less than thirty (30) days nor more than six (6) months. Every freight line company, as hereinbefore defined, shall be liable for the payment of the difference, if any, between five and one-half per cent (5½%) of all gross earnings in this state and the amounts withheld and remitted to the state of Montana by railroads, and shall be liable for the payment of any additional taxes which the department may find due under its authority to raise or lower the rate to conform to the taxes which would be payable if the cars were taxed on an ad valorem basis.

History: En. Sec. 3, Ch. 137, L. 1949; amd. Sec. 2, Ch. 346, L. 1969; amd. Sec. 1, Ch. 339, L. 1971; amd. Sec. 153, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted "five and one-half per cent (5½%)" for "five per cent (5%)" in the first and last sentences; and in the second sentence, substituted "1970" for "1950" and "1969" for "1949."

The 1971 amendment added the proviso to the third sentence; and made minor changes in phraseology and style.

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization throughout the section.

Effective Dates

Section 3 of Ch. 346, Laws 1967 read "This act is effective for all taxable years commencing after December 31, 1968."

Section 2 of Ch. 339, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

84-4821. Notice of incorrectness or insufficiency—procedure upon failure to file report. Upon the filing of the reports herein provided for, the department shall compute and determine the amount of the tax, and on or before May 1st, notify such railroad company and freight line company if such report or payment of tax be incorrect or insufficient and such railroad company shall be liable for any additional tax found to be owing the state of Montana. If no report be filed as herein required, the department shall, on or before May 1st, ascertain from whatever sources to which it has access the gross earnings of such freight line company within this state from the use or operation of such cars by such railroad company; or if the gross earnings are not capable of being ascertained, the department may estimate the gross earnings of such freight line company within this state from such railroad company and the railroad

company which failed to make the report or pay the tax shall be liable for the same together with penalties as hereinafter provided.

History: En. Sec. 4, Ch. 137, L. 1949;
amd. Sec. 154, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in three places.

84-4822. Ad valorem tax basis—complaints—notice—testimony—hearing—refunds—valuation of cars as unit. It is hereby declared to be the intention of the legislature that the tax herein imposed be not greater than the amount of tax such freight line company would pay if its cars were taxed on an ad valorem basis. No tax other than as in this act imposed shall be assessed against the business or income of any such freight line company. Any such freight line company or railroad company, on or before June 1st of the year in which the tax herein imposed has been paid, may file written complaint with the state tax appeal board concerning the correctness of the rate used, or the correctness of the amount of the tax imposed, or any other matter affecting the complainant under the provisions of this act. Upon filing such complaint, the state tax appeal board shall set the same for hearing, and shall give written notice thereof to the complainant at least ten (10) days before the date set for hearing thereon. Upon the hearing of any such complaint, the state tax appeal board shall take testimony to determine whether the amount of the tax, as computed and determined by the department of revenue, is greater than the general ad valorem tax for all purposes would be on the cars of such freight line company subject to taxation in Montana, if assessed and taxed on an ad valorem basis. In such cases the state tax appeal board shall have the power, and it shall be its duty, to lower or raise the rates herein specified to conform to the facts disclosed at such hearing and to make the amount of the tax due equivalent to such ad valorem tax. If the state tax appeal board shall then determine that the amount of the tax imposed and collected was excessive, the claimant shall be entitled to a refund to the extent of such excess. Within six (6) months after such determination the claimant may present to the state department of revenue a sworn claim for such refund, setting forth the amount thereof. The state auditor shall draw his warrant upon the state treasurer for the amount of such claim and the same shall be paid out of the freight line company tax fund created by this act, in the same manner as other claims against the state are paid. In order to determine the amount of tax such freight line company would pay, the department may value all cars of any such company as a unit and allocate to Montana that proportion of the total value which the Montana car mileage bears to the total car mileage of the cars of any such freight line company during the twelve (12) months' period ending December 31 of the preceding year, and may then apply to such value, the average total rate of all general property taxes levied for the preceding year by the taxing authorities of the state, counties, school districts, municipalities and other taxing subdivisions for state, county, school and municipal and other purposes.

History: En. Sec. 5, Ch. 137, L. 1949;
amd. Sec. 92, Ch. 405, L. 1973.

Amendments

The 1973 amendment inserted "state tax appeal" before "board" throughout the

section; deleted "which is within the jurisdiction of the board" from the end of the third sentence; substituted "department of revenue" for "board" in the middle of the fifth sentence and for "board of equalization" in the eighth sentence;

deleted "If the claim is found to be correct and is approved by the board and the state board of examiners" from the beginning of the ninth sentence; and substituted "the department" for "said board" near the beginning of the last sentence.

84-4823. Penalty for nonpayment by railroad company. If any such railroad company shall fail to pay such tax within the time specified in this act, a penalty of ten per cent (10%) of the amount of such tax shall be added thereto and charged against such railroad company by the department of revenue.

History: En. Sec. 6, Ch. 137, L. 1949; amd. Sec. 155, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board" at the end of the section.

84-4824. Actions to recover delinquent taxes and penalties—additional taxes. If the taxes and penalties provided for in this act to be paid by the railroad company on the property of such freight line company remain unpaid more than ninety (90) days from the due date, the department shall cause an action to be brought to recover the amount of such delinquent taxes and penalties in the district court of any county within the state of Montana in which service can be had on the railroad company which is liable for the payment of such taxes or penalties, or in which the property of such delinquent railroad company can be seized under attachment or garnishment proceedings in the manner prescribed by law. In the event the state tax appeal board under its authority to raise or lower the rate of the taxes which would be payable on the cars of such freight line company if taxed upon an ad valorem basis, shall, after a hearing as herein provided, find taxes due from any such freight line company in excess of the five per cent (5%) of all gross revenue in this state which is required to be paid by the railroad companies, such additional tax as so determined shall be due and payable by the freight line company upon which the assessment is made, and if such tax shall remain unpaid for more than ninety (90) days after notification of such assessment by the state tax appeal board, the board shall cause an action to be brought to recover the amount of such additional tax in the district court of any county within the state of Montana in which service can be had on the freight line company liable for the tax or in which the property of such delinquent freight line company can be seized under attachment or garnishment proceedings in the manner prescribed by law.

History: En. Sec. 7, Ch. 137, L. 1949; amd. Sec. 98, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment" for "board" before "shall cause an action" in the middle of the first sentence; and inserted "state tax appeal" before "board" in two places in the second sentence.

84-4825. Disposition of moneys—limitation of actions. All taxes collected under the provisions of this act shall be credited by the state treasurer to the state general fund. An action or proceeding in court to determine the correctness of such tax must be instituted within sixty (60) days after the payment of the tax.

History: En. Sec. 9, Ch. 137, L. 1949; amd. Sec. 4, Ch. 126, L. 1963; amd. Sec. 99, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted a second

sentence reading: "If any claim for refund be pending before the board, the board shall determine whether a refund should be made."

84-4826. Failure to file report—estoppel to impeach department of revenue's determination. If any railroad company or freight line company affected by this act shall refuse or neglect to make any report required by this act, or shall refuse or neglect to permit an examination of its books, records, accounts and papers upon demand of the department of revenue, or shall refuse or neglect to appear before the department in obedience to its order or subpoena, or shall fail to object to the tax imposed by this act within the time and in the manner prescribed by this act, it shall be estopped to question or impeach the action or determination of the department as to the validity of the tax imposed hereunder.

History: En. Sec. 10, Ch. 137, L. 1949; amd. Sec. 156, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board" in three places.

CHAPTER 49—INCOME TAX

Section	
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- 84-4938. Furnishing copy of federal return, copies of federal corrections, and filing amended return required.
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- 84-4950. Filing of annual statement by employer—duty.
- 84-4951. Amounts withheld, held in trust for state—warrants to collect.
- 84-4955. Rules and regulations—remedies for administration, enforcement and collection.
- 84-4956. Credits and refunds.
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84-4901. (2295.1) Income tax—definitions. For the purpose of this act unless otherwise required by the context:

- (1) The word “department” means the state department of revenue.
- (2). * * * [Same as parent volume.]
- (3) The term “taxable year” means the taxpayer’s taxable year for federal income tax purposes.

- (4). * * * [Same as parent volume.]

(5) The word “paid” for the purposes of the deductions and credits under this act means paid or accrued or paid or incurred, and the terms “paid or incurred” and “paid or accrued” shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this act. The term “received” for the purpose of computation of taxable income under this act, means received or accrued and the term “received or accrued” shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this act.

- (6) and (7). * * * [Same as parent volume.]

(8) The words “foreign country” or “foreign government” mean any jurisdiction other than the one embraced within the United States, its territories and possessions.

- (9). * * * [Same as parent volume.]

(10) The term “net income” means the adjusted gross income of a taxpayer less the deductions allowed by this act.

(11) The term “taxable income” means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this act.

History: En. Sec. 1, Ch. 181, L. 1933; amd. Sec. 1, Ch. 166, L. 1947; amd. Sec. 1, Ch. 253, L. 1959; amd. Sec. 1, Ch. 62, L. 1967; amd. Sec. 157, Ch. 516, L. 1973.

Amendments

The 1967 amendment substituted present subsection (3) for “The words ‘taxable

year’ mean the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this act, and include the period for which such return is made if made for a fractional part of such year under the provisions of this act or under regulations prescribed by the board. The

words 'fiscal year' mean an accounting period of twelve (12) months, ending on the last day of any month other than December thirty-first"; substituted "taxable income" for "net income" wherever found in subsection (5); substituted "its territories and possessions" for "The words 'United States' include the states, the territory of Hawaii, and the District of Columbia" at the end of subsection (8); made minor style changes in subsection (8); and inserted "adjusted" before "gross" in subsections (10) and (11).

The 1973 amendment substituted subdivision (1) for a subdivision defining "board" as the state board of equalization.

Effective Date

Section 2 of Ch. 62, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 20, 1967.

Cross-References

Corporation income tax, 84-6901 et seq.

84-4902. (2295.2) **Rate of income tax.** There shall be levied, collected and paid for each taxable year, commencing on or after December 31, 1968 upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions, as hereinafter provided, a tax at the following rates, to wit:

- (a) On the first one thousand dollars (\$1,000) of taxable income, or any part thereof, at the rate of two per centum (2%);
- (b) On the next one thousand dollars (\$1,000) of taxable income, or any part thereof, at the rate of three per centum (3%);
- (c) On the next two thousand dollars (\$2,000) of taxable income, or any part thereof, at the rate of four per centum (4%);
- (d) On the next two thousand dollars (\$2,000) of taxable income, or any part thereof, at the rate of five per centum (5%);
- (e) On the next two thousand dollars (\$2,000) of taxable income, or any part thereof, at the rate of six per centum (6%);
- (f) On the next two thousand dollars (\$2,000) of taxable income, or any part thereof, at the rate of seven per centum (7%);
- (g) On the next four thousand dollars (\$4,000) of taxable income, or any part thereof, at the rate of eight per centum (8%);
- (h) On the next six thousand dollars (\$6,000) of taxable income, or any part thereof, at the rate of nine per cent (9%);
- (i) On the next fifteen thousand dollars (\$15,000) of taxable income, or any part thereof, at the rate of ten per cent (10%);
- (j) On any taxable income in excess of thirty-five thousand dollars (\$35,000) of taxable income, or any part thereof, at the rate of eleven per cent (11%).

History: En. Sec. 2, Ch. 181, L. 1933; amd. Sec. 1, Ch. 40, Ex. L. 1933; amd. Sec. 1, Ch. 228, L. 1957; amd. Sec. 1, Ch. 265, L. 1959; amd. Sec. 1, Ch. 281, L. 1965; amd. Sec. 1, Ch. 5, Ex. L. 1967; amd. Sec. 1, Ch. 10, Ex. L. 1969.

Amendments

The 1967 amendment substantially re-wrote this section, increasing the tax. For previous text, see parent volume.

The 1969 amendment, in the introductory paragraph, substituted "1968" for "1966"; inserted subdivisions (g) and (h); redesignated former subdivision (g) as subdivi-

sion (i) and raised the rate from "eight per centum (8%)" to "ten per cent (10%)"; redesignated former subdivision (h) as subdivision (j), substituted "thirty-five thousand dollars" for "twenty-five thousand dollars" after "in excess of" and raised the rate from "ten per centum (10%)" to "eleven per cent (11%)."

Tax Credit

Section 2 of Ch. 5, Ex. Laws 1967 read "After the amount of tax liability has been computed for the current taxable year, each person filing a Montana individual income tax return may subtract

five per cent (5%) of the tax liability, and the amount remaining is the amount due the state of Montana." Section 2 was repealed by Section 7, Ch. 10, Ex. Laws 1969.

Effective Dates

Section 3 of Ch. 5, Ex. Laws 1967 read "This act shall be effective as to all taxable years commencing on or after December 31, 1966, whether on a calendar or fiscal year basis."

84-4902.1. Surtax. After the amount of tax liability has been computed for all taxable years commencing on or after December 31, 1970 but before December 31, 1972, each person filing a Montana individual income tax return shall add, as a surtax, forty per cent (40%) of the tax liability, and the amount so arrived at is the amount due the state of Montana. Thereafter the surtax shall be ten per cent (10%) of the tax liability.

History: En. Sec. 2, Ch. 10, Ex. L. 1969; amd. Sec. 40, Ch. 9, 2nd Ex. L. 1971.

Compiler's Notes

Chapter 9, 2nd Ex. L. 1971 provided for a sales tax and use tax in lieu of a portion of the surtax on the income tax, subject to referendum at a special general election held on November 2, 1971. The measure failed by a vote of 154,680 against and 66,967 for.

Title of Act

An act to amend section 84-4902, R. C. M. 1947, relating to the rate of income tax; and providing for a surcharge; and changing and adding income tax brackets and rates of income tax for all taxable years commencing on or after De-

Section 4 of Ch. 5, Ex. Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 20, 1967.

Repealing Clause

Section 5 of Ch. 5, Ex. Laws 1967 repealed all acts and parts of acts in conflict therewith.

Cross-References

Multistate tax compact, sec. 84-6701.

cember 31, 1968; and further amending section 84-4903.5, R. C. M. 1947, to provide for monthly payments to the state board of equalization of amounts withheld from payments to nonresidents under section 84-4903.2, R. C. M. 1947, if the amount withheld is \$50 or more in each quarterly period of any year, applying changes when payments are due to payment periods beginning after June 30, 1969; and providing an effective date.

Amendments

The 1971 amendment substituted "all taxable years commencing on or after December 31, 1970 but before December 31, 1972" in the first sentence for "the current taxable year"; increased the rate specified in the first sentence from 10% to 40%; and added the second sentence.

84-4903. (2295.3) Tax on nonresident—alternative tax based on gross sales. (a) * * * [Same as parent volume.]

(b) Pursuant to the provisions of article III, section 2, of the Multistate Tax Compact (Title 84, chapter 67, R. C. M. 1947), every nonresident taxpayer required to file a return, and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana, and whose annual gross volume of sales made in Montana during the taxable year do not exceed one hundred thousand dollars (\$100,000), may elect to pay an income tax of one-half ($\frac{1}{2}$) of one per cent (1%) of the dollar volume of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the taxes imposed under sections 84-4902 and 84-4902.1. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of article IV, sections 16 and 17 of the Multistate Tax Compact.

History: En. Sec. 3, Ch. 181, L. 1933; amd. Sec. 2, Ch. 253, L. 1959; amd. Sec. 1, Ch. 199, L. 1963; amd. Sec. 1, Ch. 15, L. 1971.

Amendments

The 1971 amendment added subsection (b) providing for an alternative tax for nonresident taxpayers.

Effective Dates

Section 2 of Ch. 15, Laws 1971 read "This act is effective for taxable years beginning on and after January 1, 1971."

Section 3 of Ch. 15, Laws 1971 provided the act should be in effect from and after

its passage and approval. Approved February 2, 1971.

Cross-References

Multistate tax compact, sec. 84-6701.

84-4903.1. Collection of tax from nonresidents—withholding authorized.

In order to ensure collection, in the manner and to the extent provided by section 84-4907, of the income tax imposed upon the income of nonresidents by section 84-4903, withholding of portions of certain payments to nonresidents and payment of the amounts so withheld to the state department of revenue as partial payment of such nonresidents' income tax in the manner set forth in the following sections shall be, and hereby is, required.

History: En. Sec. 1, Ch. 208, L. 1959; amd. Sec. 158, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-4903.2. Deducting and withholding from payments to nonresidents—transmittal to state department of revenue—additional reports and information—rules and regulations—order for withholding payments. Every person, firm, corporation, association, partnership, or fiduciary doing business in or having income in the state of Montana, including the state of Montana, its agencies, and instrumentalities, counties, cities, towns, school districts, and municipal corporations of every kind, which knowingly makes payments of any kind to any nonresident of the state of Montana for services performed within the state of Montana other than those described in sections 84-4942 and 84-4943, or for casual sales of property, either real or personal, located within the state of Montana, or any prizes or winnings payable from or within the state of Montana, or hiring or having a contract with any nonresident of a temporary nature to be carried out within the state of Montana, shall deduct from such payment or payments an amount to be set by the state department of revenue, not to exceed three per cent (3%) of such payment, which shall be transmitted by him to the state department of revenue as partial payment of such nonresident's income tax.

Upon finding that reports and information, in addition to that now required by law or regulation, should be filed in order to ensure the collection of Montana state income tax on payment to nonresidents for leases, rentals or royalties derived from property located within the state of Montana, the department of revenue may adopt rules and regulations requiring the filing of such reports and information.

If upon notice to a nonresident taxpayer and hearing the department finds that withholding should be made on payments to the taxpayer for leases, rentals or royalties derived from property located within the state of Montana in order to ensure the collection of Montana state income tax, it may order withholding on such payments in an amount equal to the tax liability of the nonresident taxpayer. Such order shall be binding upon all withholding agents as hereinafter described who shall receive a copy thereof, by mail or otherwise, until such agent shall receive a

copy of an order of the department terminating such withholdings as to the nonresident taxpayer.

History: En. Sec. 2, Ch. 208, L. 1959; amd. Sec. 1, Ch. 154, L. 1961; amd. Sec. 159, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in five places.

84-4903.5. Monthly payment by withholding agent—exception. Withholding agents required to deduct and withhold tax payments under the provisions of section 84-4903.2 shall remit such payments monthly to the state department of revenue for each monthly period on or before the fifteenth day of the month following the close of such monthly period, except that payments for the month of December shall be made on or before the following January 31, payments for the month of March shall be made on or before the following April 30, payments for the month of June shall be made on or before the following July 31, and payments for the month of September shall be made on or before the following October 31.

Provided, however, that when the aggregate total amount of the tax withheld under the provisions of section 84-4903.2 shall amount to less than fifty dollars (\$50) in each quarterly period of any year, such withholding agent shall not be required to file the monthly returns or to make the monthly payments last hereinabove provided for, but in lieu thereof such withholding agent shall, on or before February fifteenth of the year next succeeding that in which such payments were withheld, file an annual return in such form as shall be determined by the department, and shall pay therewith the amount required by this act to be deducted and withheld by such withholding agent from all payments paid during the preceding calendar year.

History: En. Sec. 5, Ch. 208, L. 1959; amd. Sec. 2, Ch. 154, L. 1961; amd. Sec. 3, Ch. 10, Ex. L. 1969; amd. Sec. 160, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted "monthly" for "quarterly" wherever appearing in the section; in the first paragraph, substituted "fifteenth day of the month" for "last day of the month," and added the exception; and, in the second paragraph, substituted "fifty dollars (\$50)" for "ten dollars (\$10)."

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the first paragraph and near the end of the second paragraph.

Effective Dates

Section 4 of Ch. 10, Ex. Laws 1969 read

"Section 1 [84-4902] and section 2 [84-4902.1] of this act shall be effective as to all taxable years commencing on or after December 31, 1968, whether on a calendar or fiscal year basis."

Section 5 of Ch. 10, Ex. Laws 1969 read "Section 3 [84-4903.5] of this act shall be effective as to all payment periods beginning after June 30, 1969."

Section 6 of Ch. 10, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

Repealing Clauses

Section 7 of Ch. 10, Ex. Laws 1969 read "Section 2 of chapter five, extraordinary session laws of Montana, 1967 is repealed."

Section 8 of Ch. 10, Ex. Laws 1969 repealed all acts and parts of acts in conflict therewith.

84-4903.6. Modification of withholding provisions. The conditions set forth in section 84-4903.2 may be modified by the state department of revenue provided:

(a) The withholding agent shall ensure the department by bond or deposit of securities subject to approval by the state treasurer, or cash which shall not bear interest, that he will comply with the withholding requirements in so far as his obligation as a withholding agent is concerned, or

(b) The nonresident taxpayer shall furnish to the state department of revenue under such rules and regulations as it may prescribe an affidavit as to the correct amount of taxable income subject to the provisions of this act, in which case the state department of revenue shall determine the amount to be withheld.

History: En. Sec. 6, Ch. 208, L. 1959;
amd. Sec. 161, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in four places.

84-4903.7. Failure to withhold or pay—penalties. If any withholding agent knowingly fails to withhold or pay to the state department of revenue any sums required by this act, or any order made pursuant to this act, to be withheld and paid, the same additions to the amount of such tax shall be imposed and added as those specified in section 84-4924 with respect to failure to make a return of income or to pay any income tax; and any individual, corporation or partnership, or any officer or employee thereof, who, with intent to evade any tax or any requirement of this act, or who, with like intent, files or supplies any false or fraudulent statement or information, shall be liable to the same penalties as those imposed by section 84-4924 with respect to filing or supplying any false or fraudulent statement or information with respect to income taxes.

History: En. Sec. 7, Ch. 208, L. 1959;
amd. Sec. 3, Ch. 154, L. 1961; amd. Sec.
162, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-4903.8. Department may require withholding agent to make return and pay tax at any time. If the state department of revenue in any case has reason to believe that the collection of the tax provided for in this section is in jeopardy, it may require the withholding agent to make such return and pay such tax at any time.

History: En. Sec. 8, Ch. 208, L. 1959;
amd. Sec. 163, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-4903.9. Amounts withheld as lien against agent—priority. In addition to the penalties above-provided if any withholding agent shall withhold any sums required to be withheld and paid over to the state department of revenue under this act, the amount of the sums so withheld shall constitute a first lien against all property, real and personal, tangible and intangible, of the withholding agent, which lien shall take precedence over all others, it being the intention of this act that the funds withheld by the withholding agent shall be considered funds held in trust by the withholding agent.

History: En. Sec. 9, Ch. 208, L. 1959; **Amendments**
amd. Sec. 164, Ch. 516, L. 1973.

The 1973 amendment substituted "department of revenue" for "board of equalization" near the middle of the section.

84-4903.10. Rights of nonresident. No nonresident taxpayer shall have any right of action against a withholding agent on account of any moneys withheld and paid over to the state department of revenue under this act, but nothing in this section shall be construed as removing any legal rights or remedies of such nonresident taxpayer for return of any tax erroneously or illegally collected or for any refund that may be due him.

For the purposes of any contract, leases or other obligations, any sum withheld pursuant to this act shall be deemed to have been paid to the nonresident at the time of such withholding.

History: En. Sec. 10, Ch. 208, L. 1959; **Amendments**
amd. Sec. 165, Ch. 516, L. 1973.

The 1973 amendment substituted "department of revenue" for "board of equalization" in the first paragraph.

84-4903.11. Nonresident ad valorem taxpayers—list—duty of state department of revenue or its agent. It shall be the duty of the department of revenue or its agent in every county in this state to prepare annually a list showing the names and addresses of all nonresident ad valorem taxpayers in his county, as shown on the current assessment roll, and forward such list to the state department of revenue after the completion of the roll on the second Monday in July but not later than September 30 of each year.

History: En. Sec. 11, Ch. 208, L. 1959;
amd. Sec. 100, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment of revenue or its agent in" for "county assessor of"; and substituted "department of revenue" for "board of equalization" near the end of the section.

84-4903.12. List of loans made to nonresidents upon grain for which chattel mortgage filed—duty of clerk to prepare. It shall be the duty of the county clerk and recorder of every county in this state to prepare monthly a list showing such information as may be prescribed by the state department of revenue with respect to each loan made to a nonresident upon grain for which a chattel mortgage has been filed in his office and such list shall be mailed to the state department of revenue not later than the tenth day of the month following.

History: En. Sec. 12, Ch. 208, L. 1959;
amd. Sec. 166, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

84-4903.13. Rules and regulations. The state department of revenue is hereby empowered to make all necessary rules and regulations for carrying out and enforcing this act.

History: En. Sec. 13, Ch. 208, L. 1959;
amd. Sec. 167, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

84-4905. (2295.5) Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, and in addition shall include the following:

(a) Interest received on obligations of another state or territory, or county, municipality, district, or other political subdivision thereof:

(b) Refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) Adjusted gross income does not include the following which are exempt from taxation under this act:

(a) Interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof:

(b) All benefits received under the Federal Employees Retirement Act not in excess of three thousand six hundred dollars (\$3,600).

(c) All benefits paid under the Montana Teachers Retirement Act which are specified as exempt from taxation by section 75-2713.

(d) All benefits paid under the Montana Public Employees Act which are specified as exempt from taxation by section 68-1303.

(e) All benefits paid under the Montana Highway Patrol Retirement Act which are specified as exempt from taxation by section 31-221.

(f) Montana income tax refunds or credits thereof.

(3) * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 181, L. 1933; amd. Sec. 1, Ch. 167, L. 1947; amd. Sec. 1, Ch. 260, L. 1955; amd. Sec. 1, Ch. 58, L. 1963; amd. Sec. 1, Ch. 129, L. 1965; amd. Sec. 1, Ch. 236, L. 1971; amd. Sec. 1, Ch. 345, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 236 and once by Ch. 345. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Section 75-2713, referred to at the end of subdivision (2) (c), was repealed by Sec. 496, Ch. 5, Laws of 1971. Similar provisions are now contained in sec. 75-6215.

Section 68-1303, referred to at the end of subdivision (2)(d), was repealed by Sec. 63, Ch. 323, Laws of 1973. For similar provision in present law, see sec. 68-2502.

Amendments

Chapter 236, Laws of 1971, added "district, or other political subdivision thereof" to the end of subdivision (1) (a);

added "the state of Montana, county, municipality, district, or other political subdivision thereof" to the end of subdivision (2) (a); and made minor changes in phraseology.

Chapter 345, Laws of 1971, deleted former subdivision (2) (b); and redesignated former subdivisions (c), (d), (e), (f), and (g) of subsection (2) as subdivisions (b), (c), (d), (e), and (f), respectively.

Effective Dates

Section 2 of Ch. 236, Laws 1971 read "The provisions of this act shall apply to all taxable years commencing on or after December 31, 1970, whether on a calendar or fiscal year basis."

Section 3 of Ch. 236, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

Section 2 of Ch. 345, Laws 1971 read "For the taxable year beginning on and after January 1, 1971, the amendment to Section 1 of the act is effective in accordance with Public Law 91-156, Section 1 (12 U. S. C. 548 (5))."

"For taxable years beginning on and after January 1, 1972, the amendment to

Section 1 of this act is effective in accordance with Public Law 91-156, Section 2 (12 U. S. C. 548)."

Section 3 of Ch. 345, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Military Retirement Pay

Subdivision 2(c) of this section allows

taxpayer to exempt the first \$3600 of his military retirement pay from state income tax liability; legislature used "the Federal Employees' Retirement Act" in its broad generic sense to include all federal legislation providing retirement benefits. *Nice v. State*, — M —, 507 P 2d 527.

84-4906.1. Definitions. For the purposes of this act, unless the context requires otherwise: (1) "Department" means the department of revenue provided for in Title 82A, chapter 18.

(2) "Individual" means a natural person.

(3) "Political contribution" means a contribution or gift of money to:

(a) the national committee of a national political party;

(b) the state central committee of any political organization which at the last preceding election for governor polled at least three per cent (3%) of the votes for governor;

(c) the county central committee of any political organization which at the last preceding election for governor polled at least three per cent (3%) of the votes for governor.

History: En. 84-4906.1 by Sec. 1, Ch. 229, L. 1974.

Title of Act

An act to allow a taxpayer a limited deduction from adjusted gross income for political contributions.

84-4906.2. Allowance of deduction. (1) In the case of an individual in computing net income under section 84-4906, there shall be allowed as a deduction any political contribution made by the individual within the taxable year.

(2) **Limitations.**

(a) **Amount.** The deduction under subsection (1) shall not exceed fifty dollars (\$50) or one hundred dollars (\$100) in the case of a joint return under section 84-4914.

(b) **Verification.** The deduction under subsection (1) shall be allowed, with respect to any political contribution, only if such political contribution is verified in a manner prescribed by the department.

History: En. 84-4906.2 by Sec. 2, Ch. 229, L. 1974.

84-4907. (2295.7) Nonresident taxpayers. In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income from sources within this state, but shall not include income from annuities, interest on bank deposits, interest on bonds, notes or other interest-bearing obligations, or dividends on stock of corporations; except to the extent to which the same shall be a part of income from any business, trade, profession or occupation carried on in this state. Adjusted gross income from sources within and without

this state shall be allocated and apportioned under rules and regulations prescribed by the state department of revenue.

In the case of a taxpayer other than a resident of this state, the deductions allowed in computing net income shall be restricted to those directly connected with the production of Montana income. A temporary resident shall be allowed those deductions allowed a resident to the extent that such deductions were actually incurred or expended in the state of Montana during the course of his residency.

History: En. Sec. 7, Ch. 181, L. 1933; amd. Sec. 1, Ch. 28, L. 1937; amd. Sec. 1, Ch. 7, L. 1939; amd. Sec. 1, Ch. 63, L. 1949; amd. Sec. 1, Ch. 17, L. 1951; amd. Sec. 1, Ch. 111, L. 1953; amd. Sec. 3, Ch. 260, L. 1955; amd. Sec. 1, Ch. 237, L. 1963; amd. Sec. 1, Ch. 270, L. 1965; amd. Sec. 168, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the first paragraph.

Cross-References

Multistate tax compact, sec. 84-6701.

84-4907.1. Veterans' bonus—exemption from income tax law. All payments made under the World War I Bonus Law, Korean Bonus Law and the Veterans' Bonus Law, are hereby exempt from taxation under the income tax laws of the state of Montana, and any income tax which has been or may hereafter be paid on income received from this source shall be considered an overpayment and shall be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department, in the same manner as other income tax refund claims are paid.

History: En. Sec. 1, Ch. 43, L. 1953; amd. Sec. 1, Ch. 227, L. 1957; amd. Sec. 1, Ch. 4, L. 1965; amd. Sec. 169, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" near the end of the section.

84-4908. (2295.8) Alternative deduction allowed in computing net income. In the case of a resident individual, a standard deduction equal to ten per cent (10%) of adjusted gross income shall be allowed if elected by the taxpayer on his return. The standard deduction shall be in lieu of all deductions allowed under section 84-4906, R. C. M. 1947. The maximum standard deduction shall be five hundred dollars (\$500) except in the case of a single joint return of husband and wife the maximum standard deduction shall be one thousand dollars (\$1,000). The standard deduction shall not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married shall be made as of the last day of the taxable year; provided, however, if one of the spouses dies during the taxable year, the determination shall be made as of the date of death.

History: En. Sec. 8, Ch. 181, L. 1933; amd. Sec. 1, Ch. 207, L. 1949; amd. Sec. 1, Ch. 187, L. 1953; amd. Sec. 4, Ch. 260, L. 1955; amd. Sec. 1, Ch. 202, L. 1969; amd. Sec. 1, Ch. 357, L. 1971.

Amendments

The 1969 amendment, in the first sen-

tence, deleted "prior to the allowance of any deductions provided for in section 84-4906" after "adjusted gross income"; substituted the present second sentence for former provision which was similar to the second sentence save for the exception; substituted, in the fourth sentence, "either the husband or the wife" for "a hus-

band or wife" and "one of the spouses" for "the other spouse" and deleted "on the basis of net income computed" after "determined"; and added the last sentence.

The 1971 amendment deleted "except the deduction allowed for federal income taxes under paragraph (b) of that section" from the end of the second sentence.

Effective Dates

Section 2 of Ch. 202, Laws 1969 read

"This act is effective as to taxable years ending on and after December 31, 1968."

Section 2 of Ch. 357, Laws 1971 read "The provisions of this act shall be effective for taxable years beginning on and after January 1, 1971."

Section 3 of Ch. 357, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

84-4910. (2295.10) Exemptions. (a) * * * [Same as parent volume.]

(b) Taxpayer and Spouse. An exemption of six hundred fifty dollars (\$650) shall be allowed for taxable years beginning after December 31, 1973 for the taxpayer; and an additional exemption of six hundred fifty dollars (\$650) shall be allowed for taxable years beginning after December 31, 1973 for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(c) Additional Exemption for Taxpayer or Spouse Aged Sixty-five (65) or More. (1) For taxpayer. An additional exemption of six hundred fifty dollars (\$650) shall be allowed for taxable years beginning after December 31, 1973 for the taxpayer if he has attained the age of sixty-five (65) before the close of his taxable year.

(2) For spouse. An additional exemption of six hundred fifty dollars (\$650) shall be allowed for taxable years beginning after December 31, 1973 for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse has attained the age of sixty-five (65) before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(d) Additional Exemption for Blindness of Taxpayer or Spouse. (1) For taxpayer. An additional exemption of six hundred fifty dollars (\$650) shall be allowed for taxable years beginning after December 31, 1973 for the taxpayer if he is blind at the close of his taxable year.

(2) For spouse. An additional exemption of six hundred fifty dollars (\$650) shall be allowed for taxable years beginning after December 31, 1973 for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this paragraph, the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer; except that if the spouse dies during such taxable year such determination shall be made as of the time of such death.

(3) * * * [Same as parent volume.]

(e) Additional Exemption for Dependents. (1) In general. An exemption of six hundred fifty dollars (\$650) shall be allowed for taxable years beginning after December 31, 1973 for each dependent:

(A) Whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than six hundred fifty dollars (\$650) shall be allowed for taxable years beginning after December 31, 1973, or

(B) * * * [Same as parent volume.]

(2) to (4) * * * [Same as parent volume.]

(f) to (i) * * * [Same as parent volume.]

History: En. Sec. 10, Ch. 181, L. 1933; amd. Sec. 1, Ch. 29, L. 1941; amd. Sec. 1, Ch. 196, L. 1949; amd. Sec. 1, Ch. 233, L. 1957; amd. Sec. 3, Ch. 253, L. 1959; amd. Sec. 2, Ch. 199, L. 1963; amd. Sec. 1, Ch. 363, L. 1974.

Amendments

The 1974 amendment increased the allowance for personal exemption for taxable years beginning after December 31, 1973 from \$600 to \$650.

84-4913. (2295.13) Information agents' duties. Every information agent shall make return to the department of complete information concerning the following distributions made for any individual during the taxable year, upon which no withholding tax has been deducted:

(1) Sums in excess of ten dollars (\$10) distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code of 1965 or as that section may be amended, and payments made under a retirement plan covering an owner-employee as defined in section 401 (c) (3) of the Internal Revenue Code of 1965 or as that section may be amended;

(2) Interest, other than that specified in subsection (1) of this section, rents, royalties, salaries, wages, prizes, awards, annuities, pensions and other fixed or determinable gains, profits and income in excess of six hundred dollars (\$600), except interest coupons payable to the bearer.

The return should be made under the regulations and in the form and manner prescribed by the department, provided, however, that for ease of reporting, the form shall be as nearly identical to the comparable federal form as possible.

History: En. Sec. 13, Ch. 181, L. 1933; amd. Sec. 7, Ch. 260, L. 1955; amd. Sec. 1, Ch. 205, L. 1967; amd. Sec. 170, Ch. 516, L. 1973.

Amendments

The 1967 amendment completely rewrote this section. For previous text, see parent volume.

The 1973 amendment substituted "department" for "board" in the preliminary clause and in the final paragraph.

Compiler's Notes

The Internal Revenue Code, referred to in subsection (1), is codified as Tit. 26 of the United States Code.

84-4914. (2295.14) Returns and payment of tax—penalty and interest—refunds—credits. (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of more than six hundred sixty-five dollars (\$665), and married individuals not filing separate returns and having a combined gross income for the taxable year of more than one thousand three hundred thirty dollars (\$1,330), shall be liable for a return to be filed on such forms and according to such rules and regulations as the department of revenue may prescribe. The gross income amounts referred to in the preceding sentence shall be increased by six hundred dollars (\$600) for each additional personal exemption allowance the taxpayer

is entitled to claim for himself and his spouse under section 84-4910(c) and (d). A nonresident shall be required to file a return if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of section 84-4910(b), (c) and (d), as prorated according to paragraph (i) of said section.

(2) In accordance with instructions set forth by the department, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired, unless the department so consents.

(3). * * * [Same as parent volume.]

(4) All taxpayers, including, but not limited to those subject to the provisions of sections 84-4939 and 84-4943, shall compute the amount of income tax payable and shall at the time of filing the return required by this act, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld as provided by section 84-4943, and/or any payment made by reason of an estimated tax return provided for in section 84-4939; provided however, the tax so computed is greater by one dollar (\$1) than the amount withheld and/or paid by estimated return as provided in this act.

If the amount of tax withheld and/or payment of estimated tax exceeds by more than one dollar (\$1) the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the department within thirty (30) days after notice of the amount of the tax as computed with interest added at the rate of nine per centum (9%) per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within thirty (30) days after the first notice of the amount is mailed to the taxpayer.

If payment is not made within thirty (30) days or if the understatement is due to negligence on the part of the taxpayer, but without fraud, there shall be added to the amount of the deficiency five per centum (5%) thereof, provided, however, that no deficiency penalty shall be less than two dollars (\$2). Interest will be computed at the rate of nine per centum (9%) per annum or fraction thereof on the additional assessment. Except as otherwise expressly provided in this subdivision, the interest shall in all cases be computed from the date the return and tax was originally

due (as distinguished from the due date as it may have been extended) to the date of payment.

If the time for filing a return is extended, the taxpayer shall pay in addition, interest thereon at the rate of nine per centum (9%) per annum from the time when the return was originally required to be filed to the time of payment.

History: En. Sec. 14, Ch. 181, L. 1933; amd. Sec. 1, Ch. 34, L. 1949; amd. Sec. 8, Ch. 260, L. 1955; amd. Sec. 2, Ch. 227, L. 1957; amd. Sec. 5, Ch. 253, L. 1959; amd. Sec. 1, Ch. 201, L. 1963; amd. Sec. 1, Ch. 347, L. 1969; amd. Sec. 1, Ch. 450, L. 1973; amd. Sec. 171, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 450 and once by Ch. 516. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment, in subsection (1), substituted "not filing a joint return with his or her spouse and" for "filing a separate return" and "not filing separate returns" for "filing a joint return"; in subsection (2), added the last sentence; in subsection (4), made minor changes in

punctuation; and in subsection (6), raised the interest rate on delinquent income taxes from "six per centum (6%)" per annum to "nine per centum (9%)."

Chapter 450, Laws of 1973, increased the amounts of income specified in the first sentence from \$600 and \$1,200 to \$665 and \$1,330; added the second and third sentences to subsection (1); and made minor changes in phraseology and punctuation.

Chapter 516, Laws of 1973, substituted references to the department of revenue for references to the state board of equalization throughout the section.

Effective Dates

Section 2 of Ch. 450, Laws 1973 read "This act shall be effective for all taxable years ending on and after December 31, 1972."

Section 3 of Ch. 450, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 23, 1973.

84-4915. (2295.15) **Exemption allowed nonresident, etc.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-4919. (2295.19) Time for filing—affidavit—forms. Returns shall be made to the department on or before the fifteenth day of the fourth month following the close of the fiscal year, or, if the return is made on the basis of the calendar year, then the return shall be made on or before the fifteenth day of April in each year. The department may grant a reasonable extension of time for filing returns whenever in its judgment good cause exists and shall keep a record of every such extension and the reason therefor. Except in the case of persons who are abroad, no such extension shall be granted for more than six (6) months. Such returns shall set forth such facts as the department may deem necessary for the proper enforcement of this act. There shall be annexed to such return the affidavit or affirmation of the persons making the return, to the effect that the statements contained therein are true. Blank forms of return shall be furnished by the department upon application, but failure to secure the form shall not relieve any taxpayer from the obligation of making any return herein required; provided, that every taxpayer liable for a tax under this law shall pay a minimum tax of one dollar (\$1.00).

History: En. Sec. 19, Ch. 181, L. 1933; amd. Sec. 1, Ch. 105, L. 1935; amd. Sec. 172, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in four places.

84-4920. (2295.20) Revision of return—time for determining tax—examination of records and persons. If, in the opinion of the department of revenue, any return of a taxpayer is in any essential respect incorrect, it may revise such return, or if any taxpayer fails to make return as herein required, the department is authorized to make an estimate of the taxable income of such taxpayer from any information in its possession, and to audit and state an account according to such return or the estimate so made by it for the taxes, penalties and interest due the state from such taxpayer. Except in the case of willfully false or fraudulent return with intent to evade the tax, the amount of tax due under any return shall be determined by the department within five (5) years after the return was made, and the department thereafter shall be barred from revising any such returns or recomputing the tax due thereon and no proceeding in court for the collection of such tax shall be instituted after the expiration of said period notwithstanding the provisions of section 84-4929. In the case of a willfully false or fraudulent return, the amount of tax due may be determined at any time after the return is filed and the tax may be collected at any time after it becomes due, and where no return has been filed, the tax may be assessed at any time.

The department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, may also examine or cause to have examined, by any agent or representative designated, by it for that purpose, any books, papers or records of memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any person having knowledge in the premises, and may take testimony and require proof material for its information, with power to administer oaths to such person or persons.

History: En. Sec. 20, Ch. 181, L. 1933; amd. Sec. 1, Ch. 103, L. 1955; amd. Sec. 173, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization throughout the section.

84-4920.1. Suspension of running of statute of limitations—grounds. The running of the statute of limitations provided for under section 84-4920 shall be suspended during any period that the federal statute of limitations for collection of federal income tax has been suspended by (1) written agreement signed by the taxpayer or, (2) when the taxpayer has instituted an action which has the effect of suspending the running of the federal statute of limitations, and for one (1) additional year. If the taxpayer fails to file a record of changes in federal taxable income or an amended return as required by section 84-4938, the said statute of limitations shall not apply until five years from the date the federal changes become final or the amended federal return was filed. If the taxpayer omits from

gross income an amount properly includable therein which is in excess of twenty-five per cent (25%) of the amount of adjusted gross income stated in the return the said statute of limitations shall not apply for two additional years from the time specified in section 84-4920.

History: En. Sec. 2, Ch. 103, L. 1955;
amd. Sec. 1, Ch. 61, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

84-4921. (2295.21) Oaths may be administered by director of revenue and designated employees. The director and each employee designated by him may administer an oath to any person, or take the acknowledgment of any person in respect to any report or return required by or pursuant to this act, or by the rules and regulations of the department.

History: En. Sec. 21, Ch. 181, L. 1933;
amd. Sec. 101(a), Ch. 405, L. 1973.

director and each employee designated by him" for "board and each assistant, or deputy"; and substituted "department" for "board" at the end of the section.

Amendments

The 1973 amendment substituted "di-

84-4922. (2295.22) Revision — application — hearing — adjustment. An application for revision may be filed with the department of revenue by a taxpayer within five (5) years from the original due date of the return. If the taxpayer is not satisfied with the action taken by the department, he may appeal to the state tax appeal board as provided therein, which shall have authority to grant the claim or any part thereof.

History: En. Sec. 22, Ch. 181, L. 1933;
amd. Sec. 1, Ch. 58, L. 1955; amd. Sec. 2, Ch. 201, L. 1963; amd. Sec. 102, Ch. 405, L. 1973; amd. Sec. 174, Ch. 516, L. 1973.

has therefore used the language of Ch. 405 above.

Amendments

Chapter 405, Laws of 1973 completely rewrote this section. For prior law, see parent volume.

Chapter 516, Laws of 1973, substituted references to the department of revenue for references to the state board of equalization.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 405 and once by Ch. 516. Because of the comprehensive nature of the amendment by Ch. 405, the earlier enactment, the changes made by Ch. 516 were no longer applicable. The compiler

84-4923.1. Review by court. The determination of the state department of revenue may be reviewed in the district court for Lewis and Clark county or the county in which the taxpayer resides or has his principal office or place of business, by a complaint filed by the taxpayer against the state department of revenue within six (6) months after the receipt of notice of the decision of the state department of revenue. Upon the serving of summons upon the state department of revenue as in civil action, the cause shall proceed as other civil cases. Service upon the state department of revenue may be made by serving one copy upon the director of the department of revenue. The remedies provided by this chapter for the collection of the tax shall be stayed and no assessment, distraint or proceedings in court for collection of the taxes shall be made, begun or prosecuted until ninety (90) days after such court action is finally determined. From

any determination of such court, an appeal to the supreme court may be taken by either party.

History: En. Sec. 1, Ch. 212, L. 1957; amd. Sec. 103, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equal-

ization; substituted "director of the department of revenue" for "secretary of the state board of equalization" at the end of the third sentence; and deleted "or one copy upon the chairman of the state board of equalization" at the end of the third sentence.

84-4924. (2295.24) Penalties for violations of act. (1) If any person, without intent to evade any tax imposed by this act, fails to make a return of income at the time required by or under the provisions of this act, there shall be imposed a minimum penalty of ten dollars (\$10) for such failure, or, if a tax in excess of two hundred dollars (\$200) is due, a penalty in an amount equal to five (5) per centum thereof, unless it is shown that the failure was due to reasonable cause and not due to neglect. If any person, without intent to evade any tax imposed by this act, fails to pay any tax if one is due at the time required by or under the provisions of this act, there shall be added to the tax an additional amount equal to ten (10) per centum thereof, but not less than ten dollars (\$10), unless it is shown that the failure was due to reasonable cause and not due to neglect. Interest at the rate of nine per centum (9%) per annum shall be added to the tax for the entire period it remains unpaid.

(2) If any person fails with intent to evade any tax imposed by this act, to make a return of income or to pay a tax if one is due at the time required by or under the provisions of this act there shall be added to the tax an additional amount equal to twenty-five per centum (25%) thereof, but such additional amount shall in no case be less than twenty-five dollars (\$25), and interest at one (1) per centum for each month or fraction of a month during which the tax remains unpaid.

(3) Any individual, corporation or partnership, or any officer or employee of any corporation, or member or employee of any partnership, who, with intent to evade any tax or any requirement of this act or any lawful requirement of the department thereunder, fails to pay the tax, or to make, render, sign or verify any return, or to supply any information, within the time required by or under the provisions of this act, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent return or statement, or supplies any false or fraudulent information, shall be liable to a penalty of not more than one thousand dollars (\$1,000.00), to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed one thousand dollars (\$1,000.00) or be imprisoned in the county jail not to exceed one (1) year, or both, at the discretion of the court.

(4). * * * [Same as parent volume.]

History: En. Sec. 24, Ch. 181, L. 1933; amd. Sec. 1, Ch. 163, L. 1955; amd. Sec. 3, Ch. 201, L. 1963; amd. Sec. 2, Ch. 347, L. 1969; amd. Sec. 175, Ch. 516, L. 1973.

Amendments

The 1969 amendment, in subsection (1),

deleted "or pay any tax if one is due" after "return of income," rewrote the penalty provision in the first sentence which formerly provided for a 5% penalty, but not less than \$2; inserted the second sentence; raised the interest rate in the third sentence from 6 to 9% per year; and in

subsection (2), substituted "twenty-five dollars (\$25)" for "two dollars (\$2.00)" after "shall in no case be less than."

The 1973 amendment substituted "department" for "board" near the beginning of subsection (3).

Effective Date

Section 3 of Ch. 347, Laws 1967 read "This act is effective as to taxable years ending on and after December 31, 1968."

84-4928. (2295.26) Levy upon and sale of property for payment of income taxes. If any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the department shall issue a warrant under its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person owing the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified, not more than sixty (60) days from the date of the warrant. The sheriff shall within five (5) days after the receipt of the warrant, file with the clerk of the district court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the person against whom it is levied in the same manner as a judgment docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the department a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof, such agent shall have the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the department shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax.

History: En. Sec. 26, Ch. 181, L. 1933; amd. Sec. 1, Ch. 172, L. 1947; amd. Sec. 176, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in four places.

84-4928.1. Jeopardy assessments. If the state department of revenue finds that the assessment or collection of the tax or a deficiency for any taxable year will be jeopardized in whole or in part by delay, it may mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the state department of revenue may declare the taxable period of the taxpayer immediately terminated and shall mail or issue notice of its

findings to the taxpayer, together with a demand for immediate payment of the tax based on the period declared terminated.

A jeopardy assessment is immediately due and payable and proceedings for collection may be commenced at once.

History: En. 84-4928.1 by Sec. 2, Ch. 212, L. 1967; amd. Sec. 177, Ch. 516, L. 1973.

Title of Act

An act providing an accelerated tax collection in the event it appears that a delay will jeopardize the collection of tax due the state of Montana; amending section 84-4946, R. C. M. 1947.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places in the first paragraph.

Effective Date

Section 3 of Ch. 212, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 28, 1967.

84-4929. (2295.27) Action by attorney general. Action may be brought at any time by the attorney general of the state at the instance of the department, in the name of the state to recover the amount of any taxes, penalties and interest due under this act.

History: En. Sec. 27, Ch. 181, L. 1933; amd. Sec. 178, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board."

84-4930. (2295.29) Department authorized to make rules and regulations. The department is hereby authorized to make such rules and regulations and to require such facts and information to be reported as it may deem necessary to enforce the provisions of this act.

History: En. Sec. 29, Ch. 181, L. 1933; amd. Sec. 179, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board."

84-4931. (2295.30) Divulging information unlawful — exceptions — penalty. (1) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the department or any deputy, assistant, agent, clerk or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this act, or any other information secured in the administration of this act. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except in any action or proceeding under the provisions of this act, or any other taxing act, to which the department is a party, or on behalf of any party to any action or proceedings under the provisions of this act or such other act when the reports or facts shown thereby are directly involved in such action or proceedings, in either of which events, the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceedings and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items

thereof, or the inspection by the attorney general, or other legal representatives of the state, of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted in accordance with the provisions of section 84-4928 and section 84-4929. Reports and returns shall be preserved for three (3) years and thereafter until the department orders them to be destroyed.

(2). * * * [Same as parent volume.]

(3) Notwithstanding the provisions of this section, the department may permit the commissioner of internal revenue of the United States, or the proper officer of any state imposing a tax upon the incomes of individuals, or the authorized representatives of either such officer, to inspect the returns of income of any individuals, or may furnish to such officer or his authorized representatives an abstract of the return of income of any individual or supply him with information concerning any item of income contained in any return, or disclosed by the report of any investigation of the income or return of income of any individual, but such permission shall be granted or such information furnished to such officer or his representative, only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this act.

(4) Further, notwithstanding any of the provisions of this section, the department shall furnish to the Montana highway patrol board all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to section 84-4910 (d), for the purpose of enabling said highway patrol board to administer the provisions of section 31-127, R. C. M. 1947.

History: En. Sec. 30, Ch. 181, L. 1933; amd. Sec. 1, Ch. 110, L. 1951; amd. Sec. 180, Ch. 516, L. 1973.

Amendments

The 1967 amendment added subsection (4).

The 1973 amendment substituted "department" for "board" in five places.

84-4937. Credit allowed resident taxpayers for income taxes imposed by foreign states. Subject to the following conditions, residents of this state shall be allowed a credit against the taxes imposed by this act for income taxes imposed by and paid to another state or country on income taxable under this act.

(1) and (2). * * * [Same as parent volume.]

(3) The allowable credit shall be computed by formula to be prescribed by the department.

History: En. Sec. 2, Ch. 28, L. 1941; amd. Sec. 7, Ch. 253, L. 1959; amd. Sec. 181, Ch. 516, L. 1973.

partment" for "board" at the end of subsection (3).

Amendments

The 1973 amendment substituted "de-

Cross-References

Multistate tax compact, sec. 84-6701.

84-4938. Furnishing copy of federal return, copies of federal corrections, and filing amended return required. Every taxpayer shall upon request of the department, furnish a copy of the return for the corresponding year which he has filed or may file with the federal government

showing his net income and how obtained and the several sources from which derived. If the amount of a taxpayer's taxable income is changed or corrected by the United States Internal Revenue Service or other competent authority, the taxpayer shall report such change or correction to the department within ninety days after receiving notice thereof. If a taxpayer files an amended federal income tax return changing or correcting his federal taxable income for any taxable year, he shall also file an amended return with the state department of revenue within ninety days thereafter. The department shall supply all necessary forms and shall return all such forms to the taxpayer after they have been examined by the department, upon the request of the taxpayer.

History: En. 84-4938 by Sec. 11, Ch. 260, L. 1955; amd. Sec. 2, Ch. 61, L. 1967; amd. Sec. 182, Ch. 516, L. 1973.

ences to the department of revenue for references to the state board of equalization.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

The 1973 amendment substituted refer-

Effective Date

Section 3 of Ch. 61, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 20, 1967.

84-4939. Declaration of estimated tax. (1). * * * [Same as parent volume.]

(2) In the declaration required under subsection (1) of this section the individual shall state:

(a) to (c). * * * [Same as parent volume.]

(d) Such other information as may be prescribed in rules and regulations promulgated by the department.

(3) The declaration required under subsection (1) of this section shall be filed with the department on or before April fifteenth of the taxable year except that if the requirements of subsection (1) of this section are first met:

(a) and (b). * * * [Same as parent volume.]

Provided that the declaration required to be filed during 1955 may be filed not later than October 15, 1955 if the requirements of subsection (1) of this section are fulfilled at any time prior to October 2, 1955.

(4) An individual may make amendments of a declaration filed during the taxable year under subsection (3) of this section under rules and regulations prescribed by the department.

(5) If on or before February fifteenth of the succeeding taxable year, the taxpayer files a return for the taxable year for which the declaration is required and pays in full the amount computed on their return as payable then under rules and regulations prescribed by the department.

(a) and (b). * * * [Same as parent volume.]

(6) The department shall promulgate rules and regulations governing reasonable extensions of time for filing declarations and paying the estimated tax, except in the case of taxpayers who are abroad, and no such extension shall be for more than six (6) months.

(7). * * * [Same as parent volume.]

History: En. 84-4939 by Sec. 12, Ch.

Amendments

260, L. 1955; amd. Sec. 183, Ch. 516, L. 1973.

The 1973 amendment substituted "department" for "board" in five places.

84-4940. Installment payments of estimated tax. (1) to (4). * * *

[Same as parent volume.]

(5) The application of this section of this act to taxable years of less than twelve (12) months shall be as prescribed in the rules and regulations promulgated by the department.

(6). * * * [Same as parent volume.]

History: En. 84-4940 by Sec. 13, Ch.

Amendments

260, L. 1955; amd. Sec. 184, Ch. 516, L. 1973.

The 1973 amendment substituted "department" for "board" at the end of subsection (5).

84-4942. Definitions. When used in this act:

(a) The word "department" means the state department of revenue.

(b) to (f). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 246, L. 1955;

Amendments

amd. Sec. 185, Ch. 516, L. 1973.

The 1973 amendment substituted subdivision (a) for a subdivision defining "board" as the state board of equalization.

84-4943. Deduction and withholding of tax from wages—amount.

Every employer making payment of wages shall deduct and withhold upon such wages, a tax determined in accordance with the withholding tax tables which shall be prepared and issued by the department. Persons on active service as a member of the armed forces of the United States shall not be subject to the provisions of this section.

History: En. Sec. 2, Ch. 246, L. 1955;

Amendments

amd. Sec. 3, Ch. 227, L. 1957; amd. Sec. 186, Ch. 516, L. 1973.

The 1973 amendment substituted "department" for "board" at the end of the first sentence.

84-4946. Quarterly payment by employer—exception. On or before the last day of the months of April, July, October and January of each calendar year, beginning with the month of October, 1955, every employer subject to the provisions of sections 84-4943 and 84-4945 shall file a return in such form and containing such information as may be required by the department, and shall pay therewith the amount required by section 84-4943 to be deducted and withheld by said employer from wages paid during the preceding quarterly period of three (3) months, beginning with wages paid from and after July 1, 1955.

If the total amount of the tax withheld by an employer under the provisions of this act upon the wages of all employees of any employer is less than ten dollars (\$10) in each quarterly period of any year, such employer shall not be required to file the quarterly returns or to make the quarterly payments as provided in the preceding paragraph, but in lieu thereof such employer shall, on or before February fifteenth of the year succeeding that in which such wages were paid, file an annual return in such form as may be required by the department, and shall pay therewith the

amount required to be deducted and withheld by the said employer from all wages paid during the preceding calendar year.

Provided, however, that if the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under section 84-4928.1 with respect to jeopardy assessments of income tax.

History: En. Sec. 5, Ch. 246, L. 1955; amd. Sec. 1, Ch. 212, L. 1967; amd. Sec. 187, Ch. 516, L. 1973.

Amendments

The 1967 amendment, in the first paragraph, substituted "sections 84-4943 and 84-4945" for "this act" after "provisions of"; substituted "as may be required by" for "as shall be determined by" after "such information"; and substituted "section 84-4943" for "this act" after "the amount required by"; and, in the second paragraph, substituted "If the" for "Pro-

vided, however, that when the aggregate" before "total amount of the tax"; inserted "by an employer" after "withheld"; substituted "as provided in the preceding paragraph" for "last hereinabove provided for" after "quarterly payments"; deleted "next" before "succeeding"; substituted "as may be required by" for "as shall be determined by" after "in such form"; deleted "by this act" after "the amount required"; added the last paragraph; and made minor changes in phraseology.

The 1973 amendment substituted "department" for "board" in three places.

84-4948. Annual withholding statement. Every employer shall, prior to the fifteenth day of February in each year furnish to each employee a written statement showing the total wages paid by the employer to the employee during the preceding calendar year and showing the amount of the federal income tax deducted and withheld from such wages and the amount of the tax deducted and withheld therefrom under the provisions of this act. Said statement shall contain such additional information and shall be in such form as the department shall prescribe, and a duplicate thereof shall be filed by the employee with his state income tax return.

History: En. Sec. 7, Ch. 246, L. 1955; amd. Sec. 188, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" near the end of the section.

84-4950. Filing of annual statement by employer—duty. Every employer shall, on or before the fifteenth day of February in each year file with the department a statement in such form and summarizing such information as the department shall require, including the total wages paid to each employee during the preceding calendar year or any part thereof, and showing the total amount of the federal income tax deducted and withheld from such wages and the total amount of the tax deducted and withheld therefrom under the provisions of this act. Said annual statement filed by an employer shall, with respect to the wage payments reported therein, constitute full compliance with the requirements of section 84-4913, relating to the duties of information agents, and no additional information return shall be required with respect to such wage payments.

History: En. Sec. 9, Ch. 246, L. 1955; amd. Sec. 189, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in two places.

84-4951. Amounts withheld, held in trust for state—warrants to collect.

Every employer who deducts and withholds any amounts under the provisions of this act shall hold the same in trust for the state of Montana, and if any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the department shall issue a warrant under its official seal which shall have the same force and effect and shall be enforced and carried into execution in the same manner as that specified in section 84-4928, with respect to warrants relating to unpaid income taxes.

History: En. Sec. 10, Ch. 246, L. 1955; **Amendments**
amd. Sec. 190, Ch. 516, L. 1973.

The 1973 amendment substituted "department" for "board."

84-4955. Rules and regulations—remedies for administration, enforcement and collection. The department is hereby empowered to adopt rules and regulations for the carrying out of the provisions of this act and the enforcement thereof. All of the remedies available to the state of Montana for the administration, enforcement and collection of income taxes shall be available and shall apply to the tax required to be deducted and withheld under the provisions of this act.

History: En. Sec. 14, Ch. 246, L. 1955; **Amendments**
amd. Sec. 191, Ch. 516, L. 1973.

The 1973 amendment substituted "department" for "board" at the beginning of the section.

84-4956. Credits and refunds. If the department of revenue discovers from the examination of a return, or upon claim duly filed by a taxpayer, or upon final judgment of a court, that the amount of income tax is in excess of the amount due, or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment shall be credited against any income tax, penalty or interest, then due from the taxpayer, and the balance of such excess shall be refunded to the taxpayer.

Effective with taxable years ending on or after December 31, 1959, no such credit or refund shall be allowed or made after five (5) years from the date prescribed by statute for filing the return, unless before the expiration of such period a claim therefor is filed by the taxpayer, or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. Within six (6) months after a claim for refund is filed the state department of revenue shall examine said claim and either approve or disapprove it. If said claim is approved, the credit or refund shall be made to the taxpayer within sixty (60) days after the claim is approved; if the claim is disallowed, the state department of revenue shall so notify the said taxpayer and shall grant a hearing thereon upon proper application by the taxpayer. If the department disapproves a claim for refund, review of the determination of the department may be had as otherwise provided in this chapter.

Except as hereinafter provided for, effective with taxable years ending on or after December 31, 1962, interest shall be allowed on overpayments

at the rate of six per cent (6%) per annum from the due date of the return or from the date of the overpayment (whichever date is later) to the date the department of revenue approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment shall be deemed to be the date on which the return for the taxable year was due. No interest shall accrue on an overpayment if the taxpayer elects to have it applied to his estimated tax for the succeeding taxable year; nor shall interest accrue during any period the processing of a claim for refund is delayed more than thirty (30) days by reason of failure of the taxpayer to furnish information requested by the state department of revenue for the purpose of verifying the amount of the overpayment. No interest shall be allowed (a) if the overpayment is refunded within six (6) months from the date the return is due or the date the return is filed, whichever date is later; or (b) if the overpayment results from the carryback of a net operating loss; or (c) if the amount of interest is less than one dollar (\$1.00). An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability, or one reasonably assumed to be imposed by this law, shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 1, Ch. 138, L. 1957; amd. Sec. 3, Ch. 199, L. 1963; amd. Sec. 192, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization throughout the section.

84-4958. Release of lien or partial discharge of property. (1) The department of revenue shall issue a certificate of release of any lien imposed with respect to any tax due under this chapter, when it finds that the liability for the amount of tax assessed, together with all penalties and interest in respect thereof, has been fully satisfied. The department of revenue may issue a certificate of release if it determines that the lien is unenforceable.

(2) The department of revenue may issue a certificate of discharge of any part of the property subject to any lien imposed with respect to any tax due under this chapter, if:

(a). * * * [Same as parent volume.]

(b) There is paid to the state treasurer in part satisfaction of the liability secured by the lien, an amount which shall not be less than the value, as determined by the department of revenue, of the interest of the state of Montana in the part to be discharged; or

(c) The department of revenue determines at any time that the interest of the state of Montana in the part to be so discharged has no value.

History: En. Sec. 1, Ch. 130, L. 1965; amd. Sec. 193, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in five places.

CHAPTER 51—INSURANCE COMPANIES GENERAL PROPERTY TAX

84-5101. (2111) Assessment and taxation of insurance companies.**Cross-References**

Multistate tax compact, sec. 84-6701.

CHAPTER 52—LIVESTOCK TAXATION

Section

- 84-5202. Assessment of migratory livestock.
- 84-5203. Duty of owner when livestock is removed from home county to another county.
- 84-5205. Collection and disposition of proceeds of taxes.
- 84-5206. Distribution of migratory stock fund.
- 84-5210. State department of revenue to prescribe levy.
- 84-5214. Levy for bounty moneys—use of proceeds.

84-5202. (2069) Assessment of migratory livestock. All livestock pastured, ranged or grazed, or which does pasture, range or graze in any county or counties of the state during any year, other than the county wherein the said livestock is usually kept by the owner thereof on lands claimed by him, to be known as the home county, shall be assessed for taxation, and such tax collected in the county in which it is found at the time fixed by law for the assessment of all property in the state, at the rate of levy of the home county, and it shall be the duty of the owner thereof, or his agent, at the time of the assessment of such livestock, to make and deliver to the state department of revenue or its agent in the county where such livestock is found, and to the department of revenue or its agent in the home county, a written statement, under oath, showing the different kinds of such livestock within such county belonging to him or under his charge, with their marks and brands, and showing the full time during the current year that such livestock and every part, portion and kind thereof, has been and will be, within any county or counties, other than the home county, and such livestock and the owner thereof, shall be liable to the said county or counties for the taxes thereon, as other property is liable, and the taxes thereon shall be apportioned between the home county and such other county or counties as hereinafter provided; provided, however, that the tax on all livestock fed in feeding pens or other inclosures in any county or counties other than the home county of such livestock, shall not be apportioned as provided herein, but shall be paid in full to the county treasurer of the home county of such livestock.

History: En. Sec. 1, Ch. 125, L. 1909; amd. Sec. 1, Ch. 177, L. 1921; re-en. Sec. 2069, R. C. M. 1921; amd. Sec. 104, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the state department of revenue or its agent for references to the county assessor in two places.

84-5203. (2070) Duty of owner when livestock is removed from home county to another county. Whenever such livestock is removed, kept, fed, or pastured, or permitted to range or graze, or does range or graze in any county other than its home county, the owner thereof, or the person in charge, or his agent, shall, within fifteen days from the time any such stock enters such other county, deliver to the department of revenue

or its agent in such county, and to the department or its agent in the home county, a written statement, under oath, similar in all respects, as far as practicable, to the statement required at the time of the assessment.

History: En. Sec. 2, Ch. 125, L. 1909; re-en. Sec. 2070, R. C. M. 1921; amd. Sec. 105, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor in two places.

84-5205. (2072) Collection and disposition of proceeds of taxes. The department or its agent shall indicate on the assessment roll livestock which has or will be kept, fed, pastured, ranged, or grazed in more than one county, and the treasurer, on collecting the taxes thereon in the county in which the same is assessed, shall remit the portion levied for state purposes, as in case of other taxes levied by the state of Montana, and [the department or its agent shall place] the remainder of the tax in a separate fund, known as the migratory stock fund, which shall be subject to distribution as hereinafter provided.

History: En. Sec. 4, Ch. 125, L. 1909; re-en. Sec. 2072, R. C. M. 1921; amd. Sec. 106, Ch. 405, L. 1973.

compiler has reworded the phrase to correct the apparent error.

Compiler's Notes

The language in the bracketed portion of the 1973 amendatory act read "shall place the department or its agent." The

Amendments

The 1973 amendment substituted references to the department or its agent for references to the county assessor in two places.

84-5206. (2073) Distribution of migratory stock fund. At the regular meeting in July of the board of county commissioners, the department of revenue or its agent shall transmit to the board all information filed with the department or in its possession concerning stock assessed, wherein the taxes are to be apportioned between two or more counties, and the board of county commissioners shall proceed, on receipt of such information, to distribute said migratory stock fund, in proportion to the time said stock has been in each of such counties, as above provided, and order warrants drawn in favor of the counties entitled to receive a portion of the said taxes against such migratory stock fund, and the portion remaining, belonging to the home county, shall be distributed on the order of the board of county commissioners to the proper fund, according to the tax levy made during the year such assessment was levied, and the board shall make a like distribution of all moneys received from other counties under the provisions of this act.

History: En. Sec. 5, Ch. 125, L. 1909; re-en. Sec. 2073, R. C. M. 1921; amd. Sec. 1, Ch. 52, L. 1945; amd. Sec. 107, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor in two places.

84-5210. (2077) State department of revenue to prescribe levy. The state department of revenue is hereby empowered and it is made its duty, annually, to prescribe the levy to be made against livestock of all classes for the purpose above indicated, and the various boards herein named

shall have the right to recommend to said state department of revenue the amount of such levy.

History: En. Sec. 2, Ch. 127, L. 1915; re-en. Sec. 2077, R. C. M. 1921; amd. Sec. 194, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

84-5211. (2078) Limitation of levies—livestock moneys.

84-5212. (2079) Use of moneys arising from taxes prescribed, etc.

Cross-References

Livestock commission renamed and con-

tinued in department of livestock, sec. 82A-1303.

84-5214. (2081) Levy for bounty moneys—use of proceeds. The department of revenue shall, annually prescribe, make and levy an ad valorem tax on all livestock in the state of Montana for the purpose of protecting such livestock by all means of effective predatory animal destruction, extermination and control, including systematic hunting, trapping in planned campaigns, or otherwise, and payment of bounties, against destruction, depredation and injury by wild animals, whether on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. The tax levy shall not exceed in any one (1) year (a) one and one-half (1½) mills on the assessed valuation of all sheep, and (b) one (1) mill on the assessed valuation of other livestock. The moneys received from such tax levies shall be transmitted monthly with other taxes for state purposes, by the county treasurer of each county, to the state treasury, and be by the state treasurer placed in and to the credit of the earmarked revenue fund (with other moneys in that fund under the provisions of section 46-1901) and such moneys shall thereafter be paid out only on claims duly and regularly presented to the Montana livestock commission, and thereafter approved by said commission, in accordance with the law applicable either to claims for bounties, when such claims are approved, or to claims for other expenditures necessary and proper for predatory animal control by other means and methods than payment of bounties, as may be determined by the Montana livestock commission. All such moneys shall be available for the payment of bounty claims and for expenditures in and for planned, seasonal, or other campaigns directed, or operated by the commission in co-operation with other agencies, for the systematic destruction, extermination and control of predatory wild animals, as may be determined by the commission and the advisory committee thereto. No claims shall be approved in excess of moneys available for such purposes, and no warrants shall be registered against such moneys.

History: En. Sec. 6, Ch. 127, L. 1915; re-en. Sec. 2081, R. C. M. 1921; amd. Sec. 4, Ch. 73, L. 1923; amd. Sec. 2, Ch. 152, L. 1929; amd. Sec. 1, Ch. 111, L. 1947; amd. Sec. 103, Ch. 147, L. 1963; amd. Sec. 54, Ch. 100, L. 1973; amd. Sec. 108, Ch. 405, L. 1973.

1973, once by Ch. 100 and once by Ch. 405. Neither act mentioned the other. In so far as they conflict, the compiler has used the language of Ch. 405, the later in date of approval.

Amendments

Chapter 100, Laws of 1973 deleted "under the authority of section 9, article XII of the constitution of Montana, and here-

Compiler's Notes

This section was amended twice in

by, annually prescribe" before "make and levy an ad valorem tax" in the first sentence.

Chapter 405, Laws of 1973, substituted "department of revenue" for "state board

of equalization" at the beginning of the first sentence; and made the same deletion as did Ch. 100, except that Ch. 405 did not delete "annually prescribe."

CHAPTER 54—MINES TAXATION—GENERAL PROPERTY AND NET PROCEEDS TAX

Section

84-5402. Net proceeds tax—statement of yield, penalty, extension of time.

84-5403. Net proceeds—how computed.

84-5405. Lien of tax and penalty.

84-5406. Assessment of royalties.

84-5407. False or fraudulent reports, procedure in case of.

84-5408. Transmission of net proceeds to county assessor.

84-5409. Taxation and payment on royalty interests.

84-5410. Penalty for failure to make statement—estimate of net proceeds.

84-5412. Examination of records by department of revenue.

84-5415. Dissolved corporations to make returns on net proceeds of mines and pay tax accrued.

84-5401. (2088) Taxation of mines.

Cross-References

Multistate tax compact, sec. 84-6701.

Net Proceeds

The net proceeds tax does not apply to tale once it is past the beneficiation stage; value of mining product to be taxed is

determined after initial processing of raw tale and the value should not include manufacturing processes which further refine tale for use in sophisticated products. *Pfizer, Inc. v. Madison County*, — M —, 505 P 2d 399.

84-5402. (2089) Net proceeds tax—statement of yield, penalty, extension of time. Every person, partnership, corporation, or association, engaged in mining, extracting or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or sources whatever, precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, or other valuable mineral, must on or before the thirty-first day of March of each year make out a statement of the gross yield of the above-named metals or minerals from each mine owned or worked by such person, corporation or association during the year preceding the first day of January of the year in which such statement is made, and the value thereof. Such statement shall be in the form prescribed by the state department of revenue, and must be verified by the oath of such person or the manager, superintendent, agent, president or vice-president of such corporation, association or partnership, and must be delivered to the state department of revenue on or before the thirty-first day of March. Such statement shall show the following:

1 to 12. * * * [Same as parent volume.]

If any person shall fail, neglect or refuse to file the statement required by this section within the time required, or within any extended period of time allowed, the state department of revenue when transmitting the net proceeds valuations to the counties shall inform the county assessor of such failure, neglect or refusal and the county assessor in addition to the net proceeds tax, if any, shall assess a penalty of $\frac{2}{3}$ of 1% of such tax for each calendar month or fraction thereof that the required statement is not filed, deducting therefrom any moneys collected by the state department of revenue required by this section. The state department of revenue

shall assess a penalty of \$25 for each calendar month or fraction thereof, not exceeding four months, that the required statement is not filed, to be collected by the state department of revenue and deposited to the credit of the general fund of the state of Montana.

The state department of revenue shall, upon a showing of reasonable cause, grant an extension of time for filing the statement required by this section. This penalty shall be in addition to penalties provided in section 84-5410.

History: En. Sec. 1, Ch. 237, L. 1921; re-en. Sec. 2089, R. C. M. 1921; amd. Sec. 1, Ch. 191, L. 1925; amd. Sec. 1, Ch. 139, L. 1927; amd. Sec. 1, Ch. 161, L. 1933; amd. Sec. 1, Ch. 188, L. 1935; amd. Sec. 1, Ch. 95, L. 1947; amd. Sec. 1, Ch. 138, L. 1969; amd. Sec. 195, Ch. 516, L. 1973.

Amendments

The 1969 amendment added the last two paragraphs.

The 1973 amendment substituted "department of revenue" for "board of equalization" in the preliminary clause and the final two paragraphs.

84-5403. (2090) Net proceeds—how computed. The state department of revenue shall calculate and compute from said returns the gross product yielded from such mine, and its gross value in dollars and cents for the year covered by the statement, and also shall calculate and compute the net proceeds in dollars and cents of said mine yielded to such person, corporation or association so engaged in mining which said net proceeds shall be ascertained and determined by subtracting from the value in dollars and cents of the gross product thereof the following, to wit:

1 to 7. * * * [Same as parent volume.]

In computing the deductions allowable for repairs, improvements and betterments to the mine, the state department of revenue shall compute and allow ten per cent (10%) of such cost each year for a period of ten (10) years.

No moneys invested in mines or improvements shall be allowed as a deduction unless all machinery, equipment and buildings represented by such moneys shall be returned to the county in which such mine is located for assessment purposes, at the level of assessment of all other property in such county.

No moneys invested in the mines and improvements during any year, except the year for which such statement is made, and except as hereinbefore provided in this section, shall be included in such expenditures; and such expenditures shall not include the salaries or any portion thereof, of any person or officer not actually engaged in the working of the mine or superintending the management thereof.

History: En. Sec. 2, Ch. 237, L. 1921; re-en. Sec. 2090, R. C. M. 1921; amd. Sec. 2, Ch. 191, L. 1925; amd. Sec. 2, Ch. 139, L. 1927; amd. Sec. 2, Ch. 161, L. 1933; amd. Sec. 2, Ch. 188, L. 1935; amd. Sec. 1, Ch. 57, L. 1951; amd. Sec. 1, Ch. 257, L. 1959; amd. Sec. 109, Ch. 405, L. 1973.

ences to the state department of revenue for references to the state board of equalization at the beginning of the first paragraph and in the paragraph following subdivision 7; and deleted "the county assessor of" before "the county in which such mine is located" in the second paragraph following subdivision 7.

Amendments

The 1973 amendment substituted refer-

84-5405. (2090.2) Lien of tax and penalty. The tax and/or penalty so assessed on net proceeds shall be and shall constitute a lien upon all of the right, title and interest of such operator in or to such mine or mining

claim and upon all of the right, title and interest in or to the machinery, buildings, tools and equipment used in operating said mine or mining claim, and the tax and/or penalty on such net proceeds may be collected, and the payment thereof enforced, by the seizure and sale of the personal property upon which the said tax and/or penalty is a lien, in the same manner as other personal property is seized and sold for delinquent taxes, or by the sale of the mine and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods of enforcing collection, as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any two or all of the methods herein provided for may be used until the full amount of such tax and/or penalty is collected.

History: En. Sec. 4, Ch. 161, L. 1933; amd. Sec. 2, Ch. 138, L. 1969.

Amendments

The 1969 amendment inserted "and/or

penalty" after "The tax" at the beginning of the section; and added "and the tax and/or penalty * * * such tax and/or penalty is collected."

84-5406. (2090.3) Assessment of royalties. Upon receipt of the list or schedule setting forth the names and addresses of any and all persons, corporations and associations owning or claiming royalty, and the amount or amounts paid or yielded as royalty to such royalty owners or claimants during the year for which such return is made, the state department of revenue shall proceed to the assessment of all such royalties, and shall assess the same at the full cash value of the money or product yielded during such preceding calendar year, and the same shall be taxed on the same basis as net proceeds of mines are taxed as provided by section 84-301.

History: En. Sec. 3, Ch. 188, L. 1935; amd. Sec. 196, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the middle of the section.

84-5407. (2090.4) False or fraudulent reports, procedure in case of. If any such report required by this chapter contains any willfully false or fraudulent statements as to the gross amount received by any person, corporation or association so engaged in mining as aforesaid, for any mine's product, then the said state department of revenue shall compute the gross value of such mine's product, and such gross value shall be based upon the average quotations of the price of such mine's product in New York City, or the relative market value at the point of delivery, as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York City, or some other standard publication, giving the market reports for the year covered by the statement; and, provided further, that if any such person, corporation, or association has sold or otherwise disposed of any of its mine's product at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state department of revenue shall compute the gross value of such portion of said mine's

product, so sold or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City, or the relative market value at the point of delivery at the time such portion of the product was so sold or otherwise disposed of, as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York City, or some other standard publication giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state department of revenue shall fix the value of such gross product, or such portion thereof, as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

History: En. Sec. 4, Ch. 188, L. 1935;
amd. Sec. 197, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-5408. (2091) Transmission of net proceeds to county assessor. On or before the first day of July in each year the state department of revenue shall transmit to the county assessor of each county in which such mines and mining claims are situated, the valuation of the net proceeds of such mines and mining claims for the purpose of taxation, as the same have been determined and fixed by the state department of revenue. [The said valuation for the purpose of taxation shall be an amount equal to the average net proceeds from such mine for the five calendar years next preceding, or for as many years next preceding as the mine has produced gross yield, or for as many years next preceding as this act has been in effect, whichever is less. The average net proceeds for valuation shall be computed by dividing the total net proceeds for such period by the number of years for which such net proceeds were taken into account. In determining net proceeds of each individual year for averaging to determine valuation for purposes of taxation, the actual annual net proceeds as defined in section 84-5403, including losses, if any, from such mines and mining claims shall be taken for each year rather than the average valuation for such year. In no event shall there be valuation for the purpose of taxation for a year when there has been no gross yield from such mines and mining claims for the preceding average years and such years shall not be taken into account in computing the net proceeds for any year.] The county assessor shall immediately enter the same upon an assessment roll called "assessment roll of net proceeds of mines," alphabetically arranged, and in which shall be specified in separate columns and under the following heads:

1 to 5. * * * [Same as parent volume.]

The form of said assessment roll shall be prescribed by the state department of revenue in conformity with the provisions of this act.

History: En. Sec. 3, Ch. 237, L. 1921;
re-en. Sec. 2091, R. C. M. 1921; amd.
Sec. 5, Ch. 188, L. 1935; amd. Sec. 1,
Ch. 67, L. 1945; amd. Sec. 1, Ch. 181, L.
1959; amd. Sec. 198, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-5409. (2091.1) Taxation and payment on royalty interests. At the time of transmitting net proceeds assessments the state department of revenue shall also transmit the royalty lists or schedules to the county assessor of each county in which such mines and mining claims are located and thereupon the county assessor shall prepare from such net proceeds and royalty assessments a tax roll which shall be by him furnished to the county treasurer on or before the fifteenth day of September following, upon which date said taxes shall be due and payable. Assessments of royalty on production of metals, and minerals other than petroleum and natural gas, shall be entered by the county assessor in the personal property assessment book in the name of the recipient or owner of such royalty. The county treasurer shall proceed to give full notice thereof to such recipient or royalty owner, and to collect the taxes thereon in the same manner as taxes on net proceeds of mines.

History: En. Sec. 6, Ch. 188, L. 1935; amd. Sec. 1, Ch. 162, L. 1939; amd. Sec. 2, Ch. 257, L. 1959; amd. Sec. 199, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the first sentence.

84-5410. (2092) Penalty for failure to make statement—estimate of net proceeds. If any person, partnership, association, or corporation shall refuse or neglect to make and deliver, under oath, to the state department of revenue any statement required by this act, or to comply with any requirements of this act, the state department of revenue must cause such refusal to be noted upon the assessment roll opposite the name of such person, partnership, association, or corporation, and must make an estimate of the ores, mineral products, or deposit mined and treated or sold by such person, partnership, association, or corporation, and upon such estimate shall fix and determine the value of the net proceeds of said mine or mining claim, as hereinbefore set forth. In making an estimate of the value of the net proceeds under this section, the state department of revenue shall have the power to subpoena and examine, under oath, any person, members of a partnership or association, officers or agents of a corporation, and the employees of such person, partnership, association, or corporation, and every person who refuses or neglects to appear and testify, when required so to do by the state board of equalization as herein provided, for each and every refusal shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or both such fine and imprisonment.

History: En. Sec. 4, Ch. 237, L. 1921; re-en. Sec. 2092, R. C. M. 1921; amd. Sec. 200, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-5412. (2094) Examination of records by department of revenue. The state department of revenue shall have the right and power, at any time, to examine the records of any person, partnership, association, or corporation specified in this act, as the same may pertain to the yield

of ore or mineral products or deposit, in order to verify the statements made by such person, partnership, association, or corporation, and if, from such examination, or from other information, said state department of revenue find any statement, or any material part thereof, willfully false or fraudulent, said state department of revenue must assess in the same manner as provided for in section 84-5403.

History: En. Sec. 6, Ch. 237, L. 1921;
re-en. Sec. 2094, R. C. M. 1921; amd. Sec.
201, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-5415. Dissolved corporations to make returns on net proceeds of mines and pay tax accrued. Every corporation which shall be dissolved or cease to do business in this state during any taxpaying year shall make all statements, reports and returns required by law to be made with reference to the net proceeds of mines, and pay the tax due for such period as it transacted business, on or before the date of such dissolution or cessation of business. The state department of revenue may grant a reasonable extension of time for filing a return upon good cause shown therefor.

History: En. Sec. 1, Ch. 10, L. 1941;
amd. Sec. 202, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the final sentence.

CHAPTER 55—LIEU TAXES ON RESETTLEMENT PROJECTS— REQUESTS FOR UNITED STATES PAYMENT OF

Section

84-5501. Definitions.

84-5502. State department of revenue may make requests for sums in lieu of taxes from United States, when.

84-5501. Definitions. The following definitions shall be applied to the terms used in this act:

(1). * * * [Same as parent volume.]

(2) "Department" shall mean the state department of revenue of the state of Montana.

(3) to (6). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 58, L. 1939;
amd. Sec. 203, Ch. 516, L. 1973.

division (2) for a subdivision defining "board" as the state board of equalization.

Amendments

The 1973 amendment substituted sub-

84-5502. State department of revenue may make requests for sums in lieu of taxes from United States, when. The department of revenue is hereby authorized and empowered to make requests of the United States, for and on behalf of this state, for payment of such sums in lieu of taxes as the United States may agree to pay, and to consummate agreements with the United States, in the name of this state, for the performance of services by the state for the benefit of projects, and for the payment by the United States to the state, in one or more installments, of such sums in lieu of taxes.

History: En. Sec. 2, Ch. 58, L. 1939; Amendments
amd. Sec. 204, Ch. 516, L. 1973.

The 1973 amendment substituted "department of revenue" for "board" at the beginning of the section.

CHAPTER 56—CIGARETTE TAX—LICENSES—STAMPS

Section

- 84-5606. The tax.
- 84-5606.2. Definitions.
- 84-5606.3. Wholesaler's and retailer's licenses—multiple places of business—application forms.
- 84-5606.4. Vending machines not places of business per se—reports.
- 84-5606.5. Wholesaler's and retailer's license fees—renewal—display of license.
- 84-5606.6. Disposition of license fees—appropriations—transfer to general fund—justification of expenses.
- 84-5606.7. Affixing of insignia.
- 84-5606.8. Revocation or suspension of license—hearing and appeal—duration—sale of cigarettes after revocation or suspension a misdemeanor—forfeiture.
- 84-5606.9. Unlawful acts when license not current and valid—sales to licensed wholesalers, subjobbers, retailers and cigarette vendors only—misdemeanor—forfeiture.
- 84-5606.10. Tax imposed by section 84-5606.
- 84-5606.11. Only licensed wholesalers and retailers to affix insignia.
- 84-5606.12. Purchase of insignia at discount to defray costs—defrayment inapplicable to certain portion of tax.
- 84-5606.13. Use of tax meter machine authorized—insignia to be approved—marking of imported packages of cigarettes required—supervision of machines—charge—report.
- 84-5606.14. Resale of insignia prohibited—unused meter settings.
- 84-5606.15. Payment for insignia or affixation within thirty days—bond—new licensees to pay cash.
- 84-5606.16. Proceedings upon failure or refusal to pay tax—penalty.
- 84-5606.17. Tax meter users to keep certain records—examination of records.
- 84-5606.18. Sale and use of cigarettes a misdemeanor if insignia requirements not met.
- 84-5606.19. Place where violations committed deemed a nuisance.
- 84-5606.20. Shipments or deliveries into or out of state to be reported by carrier—form and contents of report.
- 84-5606.21. Transportation of cigarettes without insignia a misdemeanor unless in interstate commerce—vehicle, cigarettes and equipment subject to seizure and forfeiture.
- 84-5606.22. Inventory of seized property—application for return of property.
- 84-5606.23. Investigations, inquiries and hearings authorized—testimony under oath—subpoena powers—finding and order to be made and filed.
- 84-5606.24. Hearing or rehearing before state tax appeal board.
- 84-5606.25. Appeal to district court—notice of appeal—perfecting appeal within thirty days—bond—hearing date.
- 84-5606.26. Department's duties and powers—arrest, entry of complaint and lawful search and seizure authorized.
- 84-5606.27. Promulgation of rules and regulations.
- 84-5606.28. County attorneys and peace officers to assist in enforcement of act—appointment of additional assistants and division authorized—presumption of violation.
- 84-5606.29. Department entitled to sue for unpaid tax and costs—treble damages.
- 84-5606.30. Employment of clerical and field assistants—disposition of taxes—war veterans' compensation fund abolished.
- 84-5606.31. Violation of act a misdemeanor unless otherwise provided—penalties.

84-5601 to 84-5605. Repealed.

Repeal

Sections 84-5601 to 84-5605 (Secs. 1 to 5, Ch. 289, L. 1947; Secs. 1, 2, Ch. 18, L.

1957), relating to licensing of cigarette dealers and distributors, were repealed by Sec. 32, Ch. 140, Laws 1969.

84-5606. The tax. (1) All taxes paid pursuant to the provisions of this section shall be conclusively presumed to be direct taxes on the retail

consumer precollected for the purpose of convenience and facility only. When the tax is paid by any other person such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Any person selling cigarettes at retail shall state or separately display in the licensed premises a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this subdivision shall in no way affect the method of collection of such tax as provided by this section.

(2) From and after the effective date of this amendatory law, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax which shall be paid prior to the time of sale and delivery thereof, to wit: Nine cents (9¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then nine cents (9¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package.

(3) From and after the effective date of this amendatory law there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivision (2) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to wit:

Two cents (2¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then two cents (2¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of all bonds of the state of Montana, and the payment of interest thereon, issued under the authority of said Initiative No. 54 as amended, for the purpose of paying an honorarium to the residents of Montana who were in military service in the military forces of the United States in World War II, the Korean War, or World War I, and until the payment and retirement of all long-range building program bonds issued under the provisions of Title 79, chapter 22, of the Revised Codes of Montana, 1947.

(4) From and after the effective date of this amendatory act of the thirty-eighth legislative assembly of the state of Montana, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivisions (2) and (3) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to wit:

One cent (1¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then one cent (1¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of the additional bonds of the

state of Montana authorized by amendatory acts of the thirty-fifth and thirty-eighth legislative assemblies, and the payment of the interest thereon and until the payment and retirement of all long-range building program bonds issued under the provisions of Title 79, chapter 22, of the Revised Codes of Montana, 1947.

(5) Within seventy-two (72) hours after receipt by the distributor or dealer of any such cigarettes, except as hereinafter provided, he shall cause to be securely affixed thereto, the required insignia denoting the tax thereon. Said insignia shall be properly canceled prior to sale or removal for consumption under such regulations as the board may prescribe. Each package shall have the required insignia to affix thereto in such a manner that the insignia will be destroyed when the package is opened. Every person who shall make, alter, forge or counterfeit any license stamp or insignia provided for in this law, or who shall assist or be concerned therein, or who shall have in his possession any altered, forged, counterfeit or spurious stamp, license or insignia, with intent to defraud the state, is guilty of forgery, and shall be punished by imprisonment in the state prison for not less than one (1) year or more than fourteen (14) years.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971.

Amendments

The 1967 amendment added "and until the payment * * * Revised Codes of Montana, 1947" at the end of the second paragraph of subdivision (3), and after "interest thereon" in the second paragraph of subdivision (4), substituted the same phrase for "and the payment of the expenses of administration of the amendatory act."

The 1971 amendment increased the tax specified in subsection (2) from five cents

to nine cents per package and made minor changes in style.

Referendum Result

Section 1 of Ch. 318, Laws 1967, read: "It is determined that the electors of the state at the general election held in November, 1966, approved the levy and collection of the three-cent (3¢) per package cigarette tax authorized by section 84-5606, subdivisions (3) and (4), R. C. M. 1947, for the purpose of financing the cost of constructing and remodeling state buildings; this referendum measure having been presented at said election in the manner directed by chapter 264 of the Session Laws of the thirty-ninth legislative assembly, and having been approved by a majority of the electors voting on the question; and that it is now necessary to establish the procedure by which said referendum may be made effective."

INITIATIVE MEASURE NO. 54 AMENDMENTS

Section 9 of chapter 270 of the 1963 Session, which amended Initiative Measure No. 54 (Laws 1951, pp. 781 to 790) was amended by section 1 of chapter 112 of the 1967 Session. Section 1 of chapter 112 of the 1967 Session was amended by section 1 of chapter 236 of the 1969 Session; Section 9 of the act now reads:

Chapter 270, Laws 1963; amd. Chapter 112, Laws 1967; amd. Chapter 236, Laws 1969.

Section 9. Claims for benefits under the provisions of subdivision (1) of section 2, and/or under section 3 of said Initiative No. 54, as by this amendatory act amended, may be filed at any time before the expiration of five (5) years and six (6) months from and after the January first next following the date of the passage and approval of this act, provided, however, that said period of five

(5) years and six (6) months shall be extended for a period equal to the period, or the aggregate of the periods, of the time during which the administration of this act shall be suspended, by reason of litigation or from any other cause.

[The remainder of Ch. 112, Laws 1967 read as follows:

"Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

"Section 3. This act shall be in full force and effect upon its passage and approval." Approved February 21, 1967.]

84-5606.2. Definitions. As used in this act the following definitions shall apply unless the context otherwise requires:

(a) The word "department" shall mean the state department of revenue of the state of Montana.

(b) The word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, organization or association however formed.

(c) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper, or any other substance or material except tobacco.

(d) The words "insignia" or "indicia" shall mean the impression or mark approved by the state department of revenue, under the provisions of this act.

(e) The words "full face value of insignia" shall mean the total amount of the tax levied under this act.

(f) The words "public warehouses" shall mean agents or representatives of manufacturers who receive cigarettes in carload lots for distribution to wholesaler and retailers in original cases.

(g) The word "wholesaler" shall mean and include any person resident in this state who brings or causes to be brought into this state unstamped cigarettes purchased directly from the manufacturers thereof and stores, sells, or otherwise disposes of the same after they shall reach this state; and also any person who, within this state, manufactures or produces, directly or indirectly, cigarettes and sells or distributes the same within this state.

(h) The words "licensed wholesaler" shall mean a wholesaler duly licensed under the provisions of this act.

(i) The words "cigarette vendor" shall mean and include any person, company or corporation, doing business in the state, who purchases cigarettes through a wholesaler for ten (10) or more cigarette vending machines, which he operates for a profit in premises or locations other than his own. Such person, company or corporation shall be treated as a wholesaler. Any person, company, corporation or fraternal organization who operates less than ten (10) cigarette vending machines shall be treated as a retailer.

(j) The word "retailer" shall mean any person other than a wholesaler, who is engaged in the business of selling cigarettes at retail.

(k) The words "licensed retailer" shall mean any person other than a wholesaler, who is duly licensed under the provisions of this act.

(l) The words "sale" and "sell" shall mean and include any transfer of cigarettes by sale, as defined by section 87A-2-106, R. C. M. 1947, or by gift, barter or exchange.

History: En. Sec. 1, Ch. 140, L. 1969; amd. Sec. 205, Ch. 516, L. 1973.

Title of Act

An act repealing sections 84-5601, 84-5602, 84-5603, 84-5604, 84-5605, 84-5607, 84-

5608, 84-5609, 84-5610, 84-5611, 84-5612, 84-5613, 84-5614, 84-5615, 84-5616, 84-5617, 84-5618, 84-5619, 84-5620, 84-5621, 84-5622, and 84-5623, R. C. M. 1947, and providing for annual license fees and for annual licensing of wholesalers and retailers of

cigarettes, and for the payment of the costs of enforcement of state cigarette laws; and providing procedures for the collection of the tax imposed by section 84-5606, R. C. M. 1947; and providing for penalties for violations of this act, and providing for the administration of this act; and providing revenue for the general fund of the state of Montana.

Amendments

The 1973 amendment substituted subdivision (a) for a subdivision defining "board" as the state board of equalization; and substituted "department of revenue" for "board of equalization" in subdivision (d).

Cross-References

Multistate tax compact, sec. 84-6701.

84-5606.3. Wholesaler's and retailer's licenses—multiple places of business—application forms. Every wholesaler or retailer shall obtain a license from the department before engaging in the business of wholesaler or retailer. A separate application and a separate license shall be required for each place of business owned, controlled or operated by such wholesaler or retailer within the state of Montana. Application forms shall require the type and general description of applicant organizations, names and home addresses of all known owners, state whether or not principals of such organization have been convicted of a felony and identify each such individual, and such other pertinent information as the board may require in regularly promulgated regulations.

History: En. Sec. 2, Ch. 140, L. 1969; amd. Sec. 206, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in the first sentence.

84-5606.4. Vending machines not places of business per se—reports. Cigarette vending machines shall not be considered as places of business per se but a report of each and all machines shall be made on forms prescribed by the department, which shall state the name and address of the cigarette vendor, the assigned location of each machine with best machine identification available, type of business, and such other information as the board may require for proper administration of this act.

History: En. Sec. 3, Ch. 140, L. 1969; amd. Sec. 207, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" near the middle of the section.

84-5606.5. Wholesaler's and retailer's license fees—renewal—display of license. Each application for a wholesaler's license shall be accompanied by a fee of fifty dollars (\$50) effective July 1, 1969. Each application for a retailer's license shall be accompanied by a fee of five dollars (\$5) effective July 1, 1969. These licenses shall be renewed annually upon payment of the annual fee in the amount set forth above, and shall be effective for one year, without proration. Each license shall be prominently displayed on the licensed premises, and a separate license shall be displayed at each place of business owned, controlled or operated by such wholesaler or retailer.

History: En. Sec. 4, Ch. 140, L. 1969.

84-5606.6. Disposition of license fees—appropriations—transfer to general fund—justification of expenses. All license fees collected under the

provisions of this act shall be deposited monthly with the state treasurer in the department's cigarette enforcement account in the earmarked revenue fund. There shall be appropriated to the department, from said cigarette enforcement account, such sum as may be necessary to comply with the provisions of this act for the fiscal biennium ending June 30, 1971. On or before June 30, 1971, the department shall pay to the state treasurer to the credit of the state general fund, all funds in excess of seven thousand five hundred dollars (\$7,500) in said cigarette enforcement account, not needed for the administration of this act.

For the biennium beginning July 1, 1971, and each biennium thereafter, there shall be appropriated to the board a sum deemed justified and reasonable to operate the department's cigarette enforcement division, providing that after payment of all pending and known expenses, all sums so appropriated in excess of seven thousand five hundred dollars (\$7,500) not needed for the administration of this act, shall be transferred to the state general fund to be available for general fund purposes. Such transfer shall be made within fifteen (15) days of the last day of the biennium.

All expenses charged against said cigarette enforcement account shall be justified by itemized claims coupled with standard accounting reports.

History: En. Sec. 5, Ch. 140, L. 1969; amendments to the department of revenue for references to the state board of equalization in four places.
amd. Sec. 208, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted refer-

84-5606.7. Affixing of insignia. Wholesalers and retailers licensed under this act may buy, sell or have in their possession only cigarettes which have the insignia provided for in this act on each package. The insignia provided for in this act shall be sold to, and affixed by, licensed wholesalers and licensed retailers only.

History: En. Sec. 6, Ch. 140, L. 1969.

84-5606.8. Revocation or suspension of license—hearing and appeal—duration—sale of cigarettes after revocation or suspension a misdemeanor—forfeiture. The department may revoke or suspend the license of any wholesaler or retailer for failure to comply with any provision of this act or of the Unfair Cigarette Sales Act (sections 51-301 through 51-314, R. C. M. 1947), and with any lawful rule or regulation of the department made pursuant to said laws. Any person aggrieved by such revocation or suspension may apply to the department for a hearing which shall be open to the public, and may further appeal to the court, as hereinafter provided. When a license has been duly revoked, no license shall again issue to such licensee for a period of one (1) year thereafter. When a license has been duly suspended, the suspension may be for any period not to exceed one (1) year. Any person who shall sell cigarettes after his license has been revoked or suspended is guilty of a misdemeanor, and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state.

History: En. Sec. 7, Ch. 140, L. 1969;
amd. Sec. 209, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in three places.

84-5606.9. Unlawful acts when license not current and valid—sales to licensed wholesalers, subjobbers, retailers and cigarette vendors only—misdemeanor—forfeiture. No person shall sell, offer to sell, or possess with intent to sell, any cigarettes, at wholesale or retail unless his license is current and valid, under the provisions of this act. No person shall sell, offer to sell or possess with intent to sell, any cigarettes, at wholesale or retail, to a resident or nonresident wholesaler, subjobber, retailer or vendor who is not licensed under this act or who is not licensed by the state in which he sells, offers to sell or intends to sell cigarettes. Any person violating the provisions of this section is guilty of a misdemeanor, and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state.

History: En. Sec. 8, Ch. 140, L. 1969;
amd. Sec. 1, Ch. 319, L. 1973.

Effective Date

Section 2 of Ch. 319, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 15, 1973.

Amendments

The 1973 amendment inserted the second sentence.

84-5606.10. Tax imposed by section 84-5606. The tax referred to in this act shall mean the tax imposed by section 84-5606, R. C. M. 1947. The full face value of the insignia or tax shall be added to the cost of the cigarettes and recovered from the ultimate consumer or user.

History: En. Sec. 9, Ch. 140, L. 1969.

84-5606.11. Only licensed wholesalers and retailers to affix insignia. Insignia shall be affixed to packages of cigarettes only by licensed wholesalers and licensed retailers.

History: En. Sec. 10, Ch. 140, L. 1969.

84-5606.12. Purchase of insignia at discount to defray costs—defrayment inapplicable to certain portion of tax. Every licensed wholesaler and licensed retailer shall be entitled to purchase said insignia at full face value less eight per cent (8%) of the face value, upon payment therefor, as defrayment of the costs of affixing insignia and precollecting such tax on behalf of the state of Montana. This defrayment is not applicable to that portion of the tax collected for any veterans' honorarium or long-range building program.

History: En. Sec. 11, Ch. 140, L. 1969.

Calculating Wholesale Price

Despite provisions of this section for discount to wholesalers in purchasing tax insignia, the full face value of the insignia is to be used in calculating wholesale

cigarette price under section 51-301, so that board of equalization formula reducing wholesale cost by discount became improper with enactment of chapter 140 of 1969 Laws. Montana Assn. of Tobacco & Candy Distributors v. State Board of Equalization, 156 M 108, 476 P 2d 775.

84-5606.13. Use of tax meter machine authorized—insignia to be approved—marking of imported packages of cigarettes required—supervision of machines—charge—report. The department of revenue may authorize any wholesaler or retailer of cigarettes licensed under this act to use a tax meter machine with which to imprint an insignia upon each package of cigarettes imported, sold or delivered in this state. The insignia shall be one approved by the department. Each package of cigarettes imported

into this state, delivered or sold therein shall be marked with the proper insignia of such tax-stamping meter and thereafter any original package of cigarettes so marked may be lawfully possessed and sold within the state by any wholesaler or retailer licensed under this act. The department shall supervise and check the operation of such tax meter machines. The operator of such machine before using the same, shall take the meter thereof to the county treasurer, of the county in which the machine is operated, who is authorized to, and shall set said meter for the number of packages specified and required by the operator. Prior to setting said meter the county treasurer shall charge said operator the amount of money proper for said setting, less the expense defrayment of eight per cent (8%) provided for in section 11 [84-5606.12]. The county treasurer shall collect this amount in advance unless the board has allowed the purchaser credit as provided in section 14 [84-5606.15]. The county treasurer shall report to the department on forms prescribed by it, the name of the licensed wholesaler or licensed retailer and the number of packages for which said meter was set and shall forward to the department any amounts collected from said licensee.

History: En. Sec. 13, Ch. 140, L. 1969;
amd. Sec. 210, Ch. 516, L. 1973.

ences to the department of revenue for
references to the state board of equaliza-
tion in five places.

Amendments

The 1973 amendment substituted refer-

84-5606.14. Resale of insignia prohibited—unused meter settings. No wholesaler or retailer shall resell to any other wholesaler or retailer any insignia purchased by him from the department. Any wholesaler or retailer who has on hand any meter settings at the time of discontinuing his business of selling cigarettes, may apply to the department and be paid the face value of said meter settings less the amount of the expense defrayment allowed by section 11 [84-5606.12].

History: En. Sec. 13, Ch. 140, L. 1969;
amd. Sec. 211, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "de-
partment" for "board" in two places.

84-5606.15. Payment for insignia or affixation within thirty days—bond—new licensees to pay cash. The department shall permit a licensed wholesaler or licensed retailer to pay for the insignia purchased, or affixation of insignia, within thirty (30) days after the date of purchase and shall require such licensee to file with the department a bond issued by a surety company approved by the state department of insurance as to solvency and responsibility and authority to transact business in the state, for such amount as the department may fix, but not in excess of an amount equal to the maximum insignia purchases incurred for any thirty (30) day period in the previous calendar year; provided, however, that any newly licensed wholesaler or licensed retailer shall pay on a cash basis for one (1) complete calendar year, after which the department may permit him thirty (30) days to pay for the purchase or affixation of insignia and shall require a bond as hereinabove provided.

History: En. Sec. 14, Ch. 140, L. 1969;
amd. Sec. 212, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "de-
partment" for "board" in four places.

84-5606.16. Proceedings upon failure or refusal to pay tax—penalty.

If any person fails or refuses to pay the tax required by this act when due, the department shall proceed to determine the tax due from such information as the department can obtain and shall assess the tax so determined against such person and notify him of the amount thereof. After such notice such tax shall become due and payable, together with a penalty of five per cent (5%) of such tax, or five dollars (\$5) per day for each day after the date of such notice, whichever is greater.

History: En. Sec. 15, Ch. 140, L. 1969; **Amendments**
amd. Sec. 213, Ch. 516, L. 1973.

The 1973 amendment substituted "department" for "board" in two places in the first sentence.

84-5606.17. Tax meter users to keep certain records—examination of records. All tax meter users shall keep for a period of one (1) year, all invoices of cigarettes purchased and imported by them, all receipts issued by them and insignia purchased, also, an accurate record of all sales of cigarettes by such tax meter users, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point and destination. Such tax meter users shall permit the department, its assistants, authorized agents or representatives to examine all taxable items of cigarettes, invoices, receipts, books, paper, memoranda and records, as may be necessary to determine whether the tax meter machine has been used as required, or the insignia required by this act had been purchased and used, or to determine the amount of such tax as may be due or unpaid.

History: En. Sec. 16, Ch. 140, L. 1969; **Amendments**
amd. Sec. 214, Ch. 516, L. 1973.

The 1973 amendment substituted "department" for "board" near the beginning of the second sentence.

84-5606.18. Sale and use of cigarettes a misdemeanor if insignia requirements not met. Every person who sells any packages of cigarettes which does not bear the insignia required by this act, and every person who shall use or consume within this state, any cigarette, unless the same shall be taken from the original package having affixed thereto the insignia required by this act, is guilty of a misdemeanor and shall be punished as hereinafter provided.

History: En. Sec. 17, Ch. 140, L. 1969.

84-5606.19. Place where violations committed deemed a nuisance. Every person having possession or control of, or who maintains a building or place where cigarettes are sold in violation of this act, or permits the same to be done in any place or building possessed, controlled or maintained by him, is guilty of maintaining and keeping a nuisance and the building or place so used, together with the personal property and fixtures used in connection therewith shall be deemed a nuisance, and such person shall be enjoined and such building or place, personal property and fixtures abated as a nuisance, at the instance of the state.

History: En. Sec. 18, Ch. 140, L. 1969.

84-5606.20. Shipments or deliveries into or out of state to be reported by carrier—form and contents of report. Every common carrier hauling, transporting or shipping into or out of the state of Montana, from or to any other state, any cigarettes shall report in writing such shipments or deliveries to the department, on forms furnished by the department, giving the date, the person to whom the same was consigned and delivered and the quantity as shown by the bill of lading, and such other information as the department may require.

History: En. Sec. 19, Ch. 140, L. 1969;
amd. Sec. 215, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in three places.

84-5606.21. Transportation of cigarettes without insignia a misdemeanor unless in interstate commerce—vehicle, cigarettes and equipment subject to seizure and forfeiture. It shall be unlawful for any person to transport into, receive, carry or move from place to place within this state, except in the course of interstate commerce, any cigarettes which do not bear the insignia required by this act. Any person violating the provisions of this section is guilty of a misdemeanor and shall be punished as hereinafter provided, and any motor vehicle, airplane, conveyance, vehicle or other means of transportation, in which cigarettes are being unlawfully transported, together with the cigarettes and other equipment or personal property used in connection with such transportation, and found in such means of transportation, shall be subject to seizure by the department, its duly authorized agent, or any sheriff or deputy, or other peace officer, and shall be subject to forfeiture in the manner hereinafter provided.

History: En. Sec. 20, Ch. 140, L. 1969;
amd. Sec. 216, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" near the end of the section.

84-5606.22. Inventory of seized property—application for return of property. Upon the seizure of any cigarettes, and within two (2) days thereafter, the person or officer making such seizure shall deliver an inventory of the property seized to the person from whom such seizure was made, if known, and file a copy thereof with the department. The person from whom the seizure was made, or any other person claiming an interest in the property seized, may apply for its return as provided in sections 95-713 through 95-716, R. C. M. 1947.

History: En. Sec. 21, Ch. 140, L. 1969;
amd. Sec. 217, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the end of the first sentence.

84-5606.23. Investigations, inquiries and hearings authorized—testimony under oath—subpoena powers—finding and order to be made and filed. The department and its duly authorized agents are empowered to conduct investigations, inquiries, and hearings hereunder, and any member thereof, or any agent, is authorized to administer oaths and take testimony under oath, relative to the matter of inquiry or investigation. The director,

or his authorized agent, may subpoena witnesses and require the production of books, papers and documents pertinent to such inquiry. The director, or his agent, after the hearing, shall make findings and an order, in writing, which findings and order shall be filed in the office of the department and open for public inspection.

History: En. Sec. 22, Ch. 140, L. 1969;
amd. Sec. 110, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment" for "board" at the beginning and near the end of the section; and substituted "director, or his" for "board, or its" at the beginning of the second and third sentences.

84-5606.24. Hearing or rehearing before state tax appeal board. Any person aggrieved by any action of the department or its duly authorized agents, under the provisions of this act, may apply to the state tax appeal board, in writing, for a hearing or rehearing thereon within thirty (30) days after such action of the department or its authorized agents. The board shall promptly consider such application, set same for hearing and notify the applicant of the time and place fixed for such hearing or rehearing, which may be at its office or in the county of the applicant. After such hearing or rehearing, the board may make any further or other order in the premises, as it may deem proper and lawful and shall furnish a copy thereof to the applicant. The department, on its own initiative, may order a hearing on any matter concerned with the administration of this act, upon at least ten (10) days' notice in writing to the person or persons to be investigated.

History: En. Sec. 23, Ch. 140, L. 1969;
amd. Sec. 111, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment" for "board" in three places; and inserted "state tax appeal" before board in the middle of the first sentence.

84-5606.25. Appeal to district court—notice of appeal—perfecting appeal within thirty days—bond—hearing date. Any person aggrieved by any action or decision of the department, made under the provisions of this act, may appeal therefrom to the district court of the county where appellant resides, which appeal shall be taken by notice of appeal in writing, setting forth the actions or decisions of the department, of which the appellant is aggrieved. Such appeal shall be perfected within thirty (30) days after notice of any action or decision of the department, and shall be taken by serving a notice of appeal upon the department and filing the same with the clerk of said court, together with a good and sufficient bond to the state of Montana. The condition of such bond shall be to the effect that appellant agrees to prosecute said appeal diligently, and if the court shall finally decide that the state is entitled to judgment, that appellant will pay the amount thereof together with costs of such appeal. The bond shall be in the form required by law and in such an amount as the court may require. The notice of appeal shall be signed by the appellant or his attorney, and the matter appealed shall be heard upon ten (10) days' notice given by either party, unless a different time is specified by the court. Said district court may grant such relief as the law and the facts in the premises require.

History: En. Sec. 24, Ch. 140, L. 1969;
amd. Sec. 218, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in four places.

84-5606.26. Department's duties and powers—arrest, entry of complaint and lawful search and seizure authorized. The department is charged with the duty of administering and enforcing the provisions of this act, and the director and his agents, are hereby given the powers of peace officers, and are authorized and empowered to arrest any person violating any provision of this act, and to enter complaint before any court of competent jurisdiction, and to lawfully search and seize and use as evidence, any unlawful or unlawfully possessed license, stamp or insignia found in the possession of any person or place.

History: En. Sec. 25, Ch. 140, L. 1969;
amd. Sec. 112, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment" for "board" at the beginning of the section; and substituted "director and his agents" for "the board, its members and agents" near the middle of the section.

84-5606.27. Promulgation of rules and regulations. The department shall have the power and authority to prescribe all rules and regulations not inconsistent with the provisions of this act, for the detailed and efficient administration thereof. All such rules, regulations and orders promulgated shall be published promptly and a copy distributed to each wholesale licensee; be published cumulative annually, and maintained in full as a public record.

History: En. Sec. 26, Ch. 140, L. 1969;
amd. Sec. 219, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the beginning of the section.

84-5606.28. County attorneys and peace officers to assist in enforcement of act—appointment of additional assistants and division authorized—presumption of violation. In the enforcement of this act, the department may call to its assistance, and it shall be the duty of any county attorney, or any peace officer, in this state, to assist the department in the enforcement of this act; and the board is hereby authorized to appoint such additional assistants, and to establish an additional division of cigarette enforcement, as may be required to carry out the provisions of this act. Whenever any cigarettes are found in the place of business of any unlicensed wholesaler, retailer or other person, without the insignia affixed and canceled, or not marked as having been received by the unlicensed wholesaler, retailer or person within the preceding seventy-two (72) hours the presumption shall be that such cigarettes are kept therein in violation of the provisions of this chapter.

History: En. Sec. 27, Ch. 140, L. 1969;
amd. Sec. 220, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in two places.

84-5606.29. Department entitled to sue for unpaid tax and costs—treble damages. In the case of any violation of this chapter, the department shall be entitled to sue, in the district where the department main-

tains its principal office for the amount of the unpaid tax and costs, including reasonable expense of the department in effecting collection of the unpaid tax. Where the court finds the failure to pay the tax has been willful, the court must, in addition, assess damages in treble the amount of the tax found to be due.

History: En. Sec. 28, Ch. 140, L. 1969;
amd. Sec. 221, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in three places in the first sentence.

84-5606.30. Employment of clerical and field assistants—disposition of taxes—war veterans' compensation fund abolished. The department is hereby authorized to employ such clerical and field assistants as may be necessary to properly administer the provisions of this law. All moneys collected under the provisions of subdivision (2) of section 84-5606, less the expense of collecting all the taxes levied, imposed and assessed by said section 84-5606, shall be paid to the state treasurer and deposited as follows: fifty per cent (50%) in the general fund, fifteen per cent (15%) in the long-range building program account in the sinking fund, and thirty-five per cent (35%) in the long-range building program account in the bond proceeds and insurance clearance fund. All taxes levied, imposed and assessed under the provisions of subdivision (3) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a subfund in the sinking fund and shall, while any of the bonds hereafter issued and sold for the purpose of paying an honorarium, or adjusted compensation, to the residents of Montana who were in military service in the military forces of the United States in World War I or World War II, or any of the interest thereon, remain unpaid, be available for the payment thereof.

All taxes levied, imposed and assessed under the provisions of subdivision (4) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a subfund in the sinking fund, which shall, while any of the bonds hereafter issued and sold, in addition to the bonds authorized by said Initiative Measure No. 54, as originally enacted, or any of the interest upon such additional bonds, remain unpaid, be used only for the payment thereof, and of the expenses of administration of this act.

The War Veterans' Compensation Fund established by Initiative No. 54, as amended by chapter 44, Laws of 1957, is abolished and all moneys in the fund are transferred to a subfund in the bond proceeds and insurance clearance fund. When all veterans' honoraria authorized by law have been paid, such moneys shall be transferred to the two (2) accounts in the sinking fund established by this section.

After all of the outstanding War Veterans' Compensation Bonds and World War I Compensation Bonds have been paid or redeemed, or after the necessary funds have been set aside for their payment or redemption, the balance of the proceeds theretofore collected under the provisions of subdivisions (3) and (4) of said section 84-5606 shall be transferred to the sinking fund account provided for in section 79-2203, R. C. M. 1947.

History: En. Sec. 29, Ch. 140, L. 1969; amd. Sec. 5, Ch. 222, L. 1971; amd. Sec. 222, Ch. 516, L. 1973.

Amendments

The 1971 amendment substituted the provisions for apportionment at the end of the second sentence of the first paragraph for a provision requiring deposit in the general fund of all moneys col-

lected under subdivision (2) of sec. 84-5606.

The 1973 amendment substituted "department" for "board" at the beginning of the section.

Effective Date

Section 6 of Ch. 222, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 5, 1971.

84-5606.31. Violation of act a misdemeanor unless otherwise provided—penalties. Unless hereinbefore expressly otherwise provided, the violation of any provision of this act shall constitute a misdemeanor, and any person violating any such provision shall be punished by a fine of not less than one hundred dollars (\$100), or more than five hundred dollars (\$500), or by imprisonment in the county jail for not less than thirty (30) days or more than six (6) months, or by both such fine and imprisonment; and if such person is the holder of a license issued under this act, such license shall be revoked by the department for a period of one (1) year.

History: En. Sec. 30, Ch. 140, L. 1969; amd. Sec. 223, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" near the end of the section.

Separability Clause

Section 31 of Ch. 140, Laws 1969 read "The provisions of this act shall be sev-

erable and if any of its provisions shall be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Repealing Clause

Section 32 of Ch. 140, Laws 1969 read "Sections 84-5601 through 84-5605, R. C. M. 1947, and sections 84-5607 through 84-5623, R. C. M. 1947, are repealed."

84-5607 to 84-5623. Repealed.

Repeal

Sections 84-5607 to 84-5623 (Secs. 7 to 23, Ch. 289, L. 1947; Sec. 16, Initiative No. 54, L. 1951, p. 781; Sec. 1, Ch. 123, L. 1953; Secs. 4 to 6, Ch. 18, L. 1957; Sec. 7, Ch. 44, L. 1957; Sec. 2, Ch. 222, L. 1957; Sec.

209, Ch. 147, L. 1963; Sec. 7, Ch. 270, L. 1963; Sec. 6, Ch. 318, L. 1967), relating to the administering of the cigarette tax, were repealed by Sec. 32, Ch. 140, Laws 1969.

CHAPTER 58—PRODUCTION CREDIT ASSOCIATIONS—TAXATION

Section

84-5801. Production credit associations—assessment and payment.

84-5801. Production credit associations—assessment and payment. Every production credit association organized under the provisions of section 1131d of title 12, United States Codes annotated shall be assessed for and pay taxes upon all real and personal property owned by such association, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained by deducting from the amount of loans, including loans secured by mortgage on real estate or personal property, the amount of such loans discounted, and any indebtedness representing money borrowed for use as moneyed capital. Said moneyed capital shall be taxed at the same rate and take the same

classification as shares of stock in a national bank or moneyed capital coming into substantial competition therewith.

The secretary or managing agent of every such association shall furnish to the assessor of the county in which the principal office of such association is located, within five (5) days after demand therefor, a statement in such detail as the department of revenue or its agent may require, verified by his oath of the resources and liabilities of such association as disclosed by its books, at twelve o'clock noon on the first Monday of March in each year. If such secretary or managing agent shall fail to make the statement hereby required, the department of revenue or its agent shall forthwith obtain such information from any other available source, and for this purpose he shall have access to the books of such association. The department of revenue or its agent shall thereupon make an assessment of the real estate and personal property owned by such association, and of the moneyed capital employed in the business of such association which assessment shall be as fair and equitable as he may be able to make from the best information available, or said assessor may, for the purpose of said assessment, adopt the figures disclosed by any prior report made by such association to any state or federal officer pursuant to any state or federal law. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

History: En. Sec. 1, Ch. 35, L. 1951;
amd. Sec. 113, Ch. 405, L. 1973.

ences to the department of revenue or its agent for references to the county assessor in the first three sentences of the second paragraph.

Amendments

The 1973 amendment substituted refer-

CHAPTER 59—MICACEOUS MINERAL MINES—LICENSE TAXES

Section

- 84-5902. Persons subject to tax.
- 84-5903. Quarterly payment.
- 84-5904. Statement filed with state department of revenue.
- 84-5905. Records.
- 84-5906. Quarterly statement—payment of tax.
- 84-5907. Failure to file statement—determination of tax—collection.

84-5902. Persons subject to tax. Every person engaged in or carrying on the business of working or operating any mine or mining property in the state of Montana from which vermiculite, perlite, kerrite, maconite or any other micaceous minerals or hydrous silicates are mined, extracted or produced, must, for the year 1951 and each year thereafter, when engaged in or carrying on such business in this state, pay to the state department of revenue, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, in an amount equal to five (5) cents per ton of two thousand (2,000) pounds for each and every ton of concentrates mined, extracted or produced by such person during such year.

History: En. Sec. 2, Ch. 50, L. 1951;
amd. Sec. 224, Ch. 516, L. 1973.

partment of revenue" for "board of equalization" in the middle of the section.

Amendments

The 1973 amendment substituted "de-

Cross-References

Multistate tax compact, sec. 84-6701.

84-5903. Quarterly payment. Such annual license tax as imposed by section 84-5902 shall be paid in quarterly installments for the quarters ending, respectively, March thirty-first, June thirtieth, September thirtieth and December thirty-first of each year, beginning with the quarter ending March 31, 1951, and the amount of such license tax due for each such quarter shall be paid to the state department of revenue within thirty (30) days after the end of each of such quarter.

History: En. Sec. 3, Ch. 50, L. 1951;
amd. Sec. 225, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-5904. Statement filed with state department of revenue. Each and every person engaged in or carrying on the business specified in section 84-5902, must, at the date when this act becomes effective, but not later than thirty (30) days thereafter, and every person who shall, after the date this act becomes effective, engage in such business, must immediately upon engaging therein, file with the state department of revenue a certificate and statement on forms prescribed by the state department of revenue, which shall contain the name under which such person is engaging in and carrying on such business within this state, giving the name of the place or places of business or location of plants within this state; the name and address of the managing agent in this state if a corporation, joint-stock company or association; or if a firm or copartnership, the names and addresses of the persons composing the same; if an association, joint-stock company or corporation, under the laws of what state organized, its principal officers; and such other information as the state department of revenue may deem necessary.

History: En. Sec. 4, Ch. 50, L. 1951;
amd. Sec. 226, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-5905. Records. Every such person shall keep a record in such form as the state department of revenue may require of all such products mined or produced by him in this state. Such records shall at all times during the business hours of the day be subject to inspection by the state department of revenue, its agents or employees.

History: En. Sec. 5, Ch. 50, L. 1951;
amd. Sec. 227, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment of revenue" for "board of equalization" in two places; and deleted "members" before "agents or employees" at the end of the section.

84-5906. Quarterly statement—payment of tax. Each and every person must, within thirty (30) days after the quarter ending March 31, 1951, and within thirty (30) days after the end of each following quarter, make out, on forms prescribed by the state department of revenue, and deliver to the state department of revenue, a statement showing the total number of tons of concentrates of vermiculite, perlite, kerrite, maconite or any other micaceous minerals or hydrous silicates mined or produced by such person, during each month of such quarter and during the whole quarter, and such other information as said board may require, together

with the total amount due to the state as license taxes for such quarter; and must, within such thirty (30) days, and at the same time such statement is delivered to the state department of revenue, pay to the state department of revenue the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, corporation or joint-stock company making the same. Any such person engaged in carrying on such business at more than one place or operating more than one mine in this state, may include all thereof in one statement.

History: En. Sec. 6, Ch. 50, L. 1951;
amd. Sec. 228, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in four places.

84-5907. Failure to file statement—determination of tax—collection.

If any person shall fail, neglect or refuse to file any statement required by section 84-5906 within the time required, or shall fail to pay the tax required by this act on or before the date such payment is due, the state department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the amount produced by such person within this state during such quarter, and during each month thereof, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter, and shall make out a statement, showing the same, and shall add to the amount of such license taxes, a penalty of twenty-five per cent (25%) thereof and deliver such statement to the attorney general, who shall proceed to collect the amount of the license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent (12%) per annum from the date of the making of such statement by the state department of revenue until paid. Upon request of the state department of revenue, it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to recover the same.

History: En. Sec. 7, Ch. 50, L. 1951;
amd. Sec. 229, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

CHAPTER 60—MIGRATORY PERSONAL PROPERTY—TAXATION

Section

- 84-6008. Assessment of personal property brought into the state—exceptions.
- 84-6012. Livestock brought into state—notice to department of revenue or its agent.
- 84-6013. Collection of tax on livestock.
- 84-6014. Intention to move livestock from one county to another—notice—proration of tax.
- 84-6015. Custom combiner's tax—collection—distribution—not transferable.

84-6008. Assessment of personal property brought into the state—exceptions. Any personal property, including livestock, brought, driven or coming into this state at any time during the year which is used in

the state for hire, compensation or profit; or if the owner and/or the user of the property is engaged in gainful occupation or business enterprise in the state; or the property otherwise comes to rest and becomes a part of the general property of the state, shall be subject to taxation and shall be assessed for all taxes, levied or leviable for that year in the county in which the same shall thus be, in the same manner and to the same extent except as hereinafter otherwise provided, as though such property had been in the county on the regular assessment date; provided that such property has not been regularly assessed for the year in some other county of the state; provided further that nothing herein contained shall be construed into authority to assess or levy any tax against any merchant or dealer within this state on goods, wares or merchandise brought into the county to replenish the stock of such merchant or dealer, in addition to the tax levied against the inventory of said merchant or dealer on the regular assessment date; provided further, that this act shall not apply to motor vehicles brought, driven or coming into this state by any non-resident migratory bona fide agricultural workers temporarily employed in agricultural work in Montana where said motor vehicles are used exclusively for transportation of agricultural workers. Agricultural harvesting machinery classified under Class 2, section 84-301, R. C. M. 1947, licensed in other states, operated on the lands of persons other than the owner of the machinery, under contracts for hire shall be subject to a fee, in lieu of taxation, of thirty-five dollars (\$35) per machine for a sixty (60) day period. Such machines shall be subject to taxation under Class 2 only if they are sold in Montana.

History: En. Sec. 1, Ch. 41, L. 1953; amd. Sec. 4, Ch. 290, L. 1967; amd. Sec. 1, Ch. 370, L. 1974.

Amendments

The 1967 amendment substituted "which is used in * * * property of the state" for "and which shall remain in the state for a period not less than thirty (30) days" before "shall be subject"; deleted "and remain" after "thus be"; deleted "and" after "county of the state"; substituted "any" for "an additional" after "assess or levy"; and substituted "in addition to * * * assessment date" for "so long as such addition does not materially increase the inventory or stock which has been duly assessed to such merchant or dealer as of the regular assessment date" before the third proviso.

The 1974 amendment added the last two sentences pertaining to the property tax liability of harvesting machinery owned by custom combine operators.

Cross-References

Multistate tax compact, sec. 84-6701.

Purchase from Dealer

Where new truck was brought into the state subsequent to the first day of January as replacement to a dealer's stock and therefore exempt from taxation under this section, truck was not subject to personal property taxation to the purchaser of the vehicle at the time of purchase, since he was not the owner of the truck on the date fixed by law for the assessment of property. *Schwartz v. Berg*, 147 M 178, 411 P 2d 736.

DECISIONS UNDER FORMER LAW

Motor Vehicle Inventory

State board of equalization would be enjoined from assessing cars or trucks brought into state as dealer's inventory after assessment date since dealer would

be taxed thereby in violation of proviso in former statute limiting subsequent tax assessments to material increases in inventory only. *Hardin Auto Co. v. Alley*, 149 M 1, 422 P 2d 346.

84-6009. Repealed.

Repeal

This section (Sec. 2, Ch. 41, L. 1953), which dealt with tax laws in relation to

listing of personal property, was repealed by Sec. 6, Ch. 290, Laws 1967.

84-6012. Livestock brought into state—notice to department of revenue or its agent. The owner or the agent, manager or foreman of any person, corporation, or association bringing livestock into this state after the first Monday in March shall immediately after said livestock crosses the state line, forward to the department of revenue or its agent in the county into which the livestock is moved, a registered letter, which letter shall contain the name of the owner of such livestock, of the number thereof, the brand thereon, and the ages of the same, together with the time and place at which said livestock was brought across the state line, provided, that the Montana livestock sanitary board at least once each month furnish, from its own records to the department of revenue or its agent in the county into which such livestock is moved, a list of the number and kind of livestock so moved, together with the name of the owner thereof.

History: En. Sec. 5, Ch. 41, L. 1953;
amd. Sec. 114, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted refer-

ences to the department of revenue or its agent for references to the county assessor in two places; and made a minor change in phraseology.

84-6013. Collection of tax on livestock. The department of revenue or its agent upon receipt of such letter or other information, that livestock has been brought into his county from outside of the state, after the first Monday in March in any year, shall immediately proceed under the provisions of section 84-4201.

History: En. Sec. 6, Ch. 41, L. 1953;
amd. Sec. 115, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment of revenue or its agent" for "county assessor" at the beginning of the section.

84-6014. Intention to move livestock from one county to another—notice—proration of tax. If any owner of livestock driven into the state as hereinbefore provided intends to move said livestock from the county of entry to another county of this state for grazing purposes, he shall file with the department of revenue or its agent in the initial county a notice to that effect, giving the number and kind of livestock and the brand thereon, and the time he intends to graze such livestock in the second county, and the department or its agent shall prorate the tax on such livestock in conformity with the provisions of sections 84-5202 to 84-5208, inclusive.

History: En. Sec. 7, Ch. 41, L. 1953;
amd. Sec. 116, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted refer-

ences to the department of revenue or its agent for references to the county assessor in two places.

84-6015. Custom combiner's tax—collection—distribution—not transferable. (1) In lieu of the taxes required by section 84-6008, R. C. M. 1947, motor vehicle license fees, Title 53, R. C. M. 1947, gross vehicle weight fees and over-width permits, Title 32, R. C. M. 1947, a nonresident engaged in the business of custom combining who brings equipment into

the state of Montana shall pay a tax of forty dollars (\$40) per unit for a period beginning July 1 and ending October 31. A unit shall be defined as:

- (a) one (1) truck suitable for hauling grain,
- (b) one (1) header trailer or one (1) combine trailer, and
- (c) pickup trucks and all other equipment, except combines, used by a nonresident and brought into the state as part of his business of custom combining.

(2) The tax required by this section shall be collected by the department of highways. Upon payment of the tax the department of highways shall provide a prominent sticker to be displayed on each truck, header trailer or combine trailer and other equipment used by the nonresident in his business of custom combining in the state of Montana, which sticker shall be valid for a period beginning July 1 and ending October 31.

(3) All tax collected under this section shall be distributed not later than December 1 immediately following the period of license as follows: sixty-two and one-half per cent ($62\frac{1}{2}\%$) to the county general fund in the county in which the permittee declares the greatest amount of time will be spent to operate, thirty-seven and one-half per cent ($37\frac{1}{2}\%$) to the earmarked revenue fund for the department of highways.

(4) The identifying device and tax paid for each vehicle in a unit shall not be transferable from one vehicle to another or transferable on the sale or change of ownership.

History: En. 84-6015 by Sec. 1, Ch. 371, L. 1974.

biners shall pay a forty dollar (\$40) tax per unit in lieu of certain other fees and taxes.

Title of Act

An act to provide that custom com-

CHAPTER 61—UNITED STATES PROPERTY—TAXATION

84-6101. Property of United States held under contract, etc.

Cross-References

Multistate tax compact, sec. 84-6701.

CHAPTER 62—MINES OR WELLS PRODUCING NATURAL GAS OR PETROLEUM—NET PROCEEDS TAX

Section

- 84-6202. Statement of yield, penalty, extension of time.
- 84-6203. Net proceeds—how computed.
- 84-6204. Deduction of drilling costs and capital expenditures.
- 84-6205. Assessment of royalties.
- 84-6206. False or fraudulent reports—procedure in case of.
- 84-6207. Transmission of net proceeds valuations to county assessor.
- 84-6208. County assessors to compute taxes.
- 84-6209. Penalty for failure to make statement—estimate of net proceeds.
- 84-6211. Statement required on dissolution of corporation during taxpaying year.
- 84-6212. Examination of records by department of revenue.
- 84-6213. Lien of tax and penalty—enforcement of payment.

84-6202. Statement of yield, penalty, extension of time. Every person engaged in mining upon any mine whatsoever containing natural gas,

petroleum, or other crude or mineral oil must on or before the thirty-first day of March in each year make out and deliver to the state department of revenue a statement of the gross yield of such natural gas, petroleum, or other crude or mineral oil from each mine owned or worked by such person during the next preceding calendar year, and the value thereof. Such statement shall be in the form prescribed by the state department of revenue and must be verified by the oath of such person or the manager, superintendent, agent, president or vice-president of such corporation, association or partnership. Such statement shall show the following:

1 to 7. * * * [Same as parent volume.]

If any person shall fail, neglect or refuse to file the statement required by this section within the time required, or within any extended period of time allowed, the state department of revenue when transmitting the net proceeds valuations to the counties shall inform the county assessor of such failure, neglect or refusal and the county assessor in addition to the net proceeds tax, if any, shall assess a penalty of $\frac{2}{3}$ of 1% of such tax for each calendar month or fraction thereof that the required statement is not filed, deducting therefrom any moneys collected by the state department of revenue required by this section. The state department of revenue shall assess a penalty of \$25 for each calendar month or fraction thereof, not exceeding four months, that the required statement is not filed, to be collected by the state department of revenue and deposited to the credit of the general fund of the state of Montana.

The state department of revenue shall upon a showing of reasonable cause, grant an extension of time for filing the statement required by this section.

This penalty shall be in addition to penalties provided in section 84-6209.

History: En. Sec. 2, Ch. 135, L. 1955; amd. Sec. 1, Ch. 159, L. 1969; amd. Sec. 117, Ch. 405, L. 1973.

The 1973 amendment substituted references to the state department of revenue for references to the state board of equalization throughout the section.

Amendments

The 1969 amendment added the last three paragraphs.

84-6203. Net proceeds—how computed. The state department of revenue shall calculate and compute from said returns the gross product yielded from such mine, and its gross value in dollars and cents for the year covered by the statement, and also shall calculate and compute the net proceeds in dollars and cents of said mine yielded to such person so engaged in mining, which said net proceeds shall be ascertained and determined by subtracting from the value in dollars and cents of the gross products thereof the following, to wit:

1 to 4. * * * [Same as parent volume.]

No moneys invested in the mines and improvements during any year, except the year for which such statement is made, shall be included in such expenditures, except as provided in section 84-6204; and such expendi-

tures shall not include the salaries, or any portion thereof, of any person or officer not actually engaged in the working of the mine or superintending the management thereof.

History: En. Sec. 3, Ch. 135, L. 1955;
amd. Sec. 230, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

84-6204. Deduction of drilling costs and capital expenditures. The state department of revenue in computing the deductions allowable for cost of drilling wells completed during the period and for other capital expenditures shall allow ten per cent (10%) of such cost each year for a period of ten (10) years, provided, however, the operator or producer may elect to amortize the cost over a period of two (2) years if the well is less than three thousand (3,000) feet deep.

The department shall also compute and allow deductions for any capital expenditures made during the year 1953, where the same have not been previously allowed in computing such net proceeds under the laws of the state of Montana.

History: En. Sec. 4, Ch. 135, L. 1955;
amd. Sec. 231, Ch. 516, L. 1973.

ences to the department of revenue for references to the state board of equalization near the beginning of each paragraph.

Amendments

The 1973 amendment substituted refer-

84-6205. Assessment of royalties. The amount of royalty received shall be considered net proceeds to the recipient and shall be assessed as follows: Upon receipt of the lists or schedules setting forth the names and addresses of any and all persons owning or claiming royalty, and the amount or amounts paid or yielded as royalty to such royalty owners or claimants during the year for which such return is made, the state department of revenue shall proceed to the assessment of all such royalties, and shall assess the same at the full cash value of the money or product yielded or accrued during such preceding calendar year, and the same shall be taxed as net proceeds of mines.

History: En. Sec. 5, Ch. 135, L. 1955;
amd. Sec. 232, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the middle of the section.

84-6206. False or fraudulent reports—procedure in case of. If any such report required by this act contains any willfully false or fraudulent statement as to the gross amount received by any person so engaged in mining as aforesaid, for any mine's product, then the said state department of revenue shall compute the gross value of such mine's product, and such gross value shall be based upon the market value at the point of production. Should there be no quotation covering any particular product, then the state department of revenue shall fix the value of such gross product in such manner as may seem to be equitable.

History: En. Sec. 6, Ch. 135, L. 1955;
amd. Sec. 233, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

84-6207. Transmission of net proceeds valuations to county assessor.

On or before the first day of July in each year the state department of revenue shall transmit to the county assessor of each county in which such mines are situated, the valuation of the net proceeds of such mines for the purpose of taxation, as the same have been determined and fixed by the state department of revenue, and the lists of royalties assessed under the provisions of section 84-6205. The county assessor shall enter the same upon an assessment roll called "Assessment Roll of Net Proceeds of Mines," the form of which shall be prescribed by the state department of revenue in conformity with the provisions of this act. The royalty assessments shall be entered by the county assessor under the name of the operator, and such assessments of royalty when entered shall have all the force and effect as if made in the names of the owners of such royalty individually as well as against the operator.

History: En. Sec. 7, Ch. 135, L. 1955;
amd. Sec. 234, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-6208. County assessors to compute taxes. Immediately after the county board of commissioners has fixed tax levies on the second Monday in August, the county assessor shall compute the taxes on such net proceeds and royalty assessments, and shall deliver the book to the county treasurer on or before the fifteenth day of September. The county treasurer shall proceed to give full notice thereof to such operator and to collect the same in manner provided by law.

The operator or producer shall be liable for the payment of said taxes and same shall be payable by and shall be collected from such operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines; provided, however, that the operator may, at his option, withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by him upon such royalty or royalty interest, after such withholding any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests.

History: En. Sec. 8, Ch. 135, L. 1955;
amd. Sec. 1, Ch. 80, L. 1963; amd. Sec.
235, Ch. 516, L. 1973.

of commissioners" for "board of equalization" near the beginning of the section.

Amendments

The 1973 amendment substituted "board

Cross-References

Multistate tax compact, sec. 84-6701.

84-6209. Penalty for failure to make statement—estimate of net proceeds. If any person shall refuse or neglect to make and deliver, under oath, to the state department of revenue any statement required by this

act, or to comply with any requirements of this act, the state department of revenue must cause such refusal to be noted upon the assessment roll opposite the name of such person, and must make an estimate of the cubic feet of natural gas, barrels of petroleum or other crude or mineral oil mined and treated or sold by such person, and upon such estimate shall fix and determine the value of the net proceeds of said mine as hereinbefore set forth. In making an estimate of the value of the net proceeds under this section, the state department of revenue shall have the power to subpoena and examine under oath, any person, members of a partnership or association, officers or agents of a corporation, and the employees of such person, partnership, association or corporation, and every person who refuses or neglects to appear and testify, when required so to do by the state department of revenue as herein provided, for each and every refusal shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars (\$1000), or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment.

History: En. Sec. 9, Ch. 135, L. 1955;
amd. Sec. 236, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in four places.

84-6211. Statement required on dissolution of corporation during tax-paying year. Every person who shall cease to do business in this state during any taxpaying year shall make all statements, reports and returns required by this act, and pay the tax due for such period as it transacted business, on or before the date of such cessation of business. The state department of revenue may grant a reasonable extension of time for filing a return upon good cause shown therefor.

History: En. Sec. 11, Ch. 135, L. 1955;
amd. Sec. 237, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the second sentence.

84-6212. Examination of records by department of revenue. The state department of revenue shall have the right and power, at any time, to examine all books, records, papers and documents of such person pertaining to such business, in order to verify the statements made by such person, and if, from such examination, or from other information, said state department of revenue finds any statement, or any material part thereof, willfully false or fraudulent, said state department of revenue must assess in the same manner as provided for in section 84-6203.

History: En. Sec. 12, Ch. 135, L. 1955;
amd. Sec. 238, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-6213. Lien of tax and penalty—enforcement of payment. The taxes and/or penalties on such net proceeds must be levied as the levy of other taxes is provided for, and every such tax and/or penalty is a lien

upon the mine from which the natural gas, petroleum, or crude or mineral oil is mined or extracted, and is a prior lien upon all personal property and improvements used in the process of extracting such natural gas, petroleum, or crude or mineral oil; provided, however, that such personal or real property is owned by or under lease by the person who extracted said natural gas, petroleum, or other crude or mineral oil.

The tax and/or penalty on such net proceeds may be collected, and the payment thereof enforced, by the seizure and sale of the personal property upon which the said tax and/or penalty is a lien, in the same manner as other personal property is seized and sold for delinquent taxes, or by the sale of the mine and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods of enforcing collection, as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any two or all of the methods herein provided for may be used until the full amount of such tax and/or penalty is collected.

History: En. Sec. 13, Ch. 135, L. 1955; penalties" and "and/or penalty" after
amd. Sec. 2, Ch. 159, L. 1969. "taxes" and "tax" where the references
appear.

Amendments

The 1969 amendment inserted "and/or

CHAPTER 63—IMPORTERS TAX ON GASOLINE PURCHASED OUTSIDE STATE AND USED IN STATE

Section

- 84-6301. Gallonage tax on gasoline in fuel tanks in excess of twenty gallons purchased outside state and used in state—exception—arrangement to buy equal amount of gas in state—monthly report.
- 84-6306. Penalty for failure, neglect, or refusal to make statement or pay tax—notification—additional penalty for failure to comply after notification.
- 84-6307. Failure or refusal to make and file return or false return—department of revenue to prepare statement.

84-6301. Gallonage tax on gasoline in fuel tanks in excess of twenty gallons purchased outside state and used in state—exception—arrangement to buy equal amount of gas in state—monthly report. Every importer who brings into this state in the fuel tanks of any motor vehicle more than twenty (20) gallons of gasoline, purchased outside the state and used to operate the vehicle upon the public highways and streets of the state, shall pay the state gallonage tax on all such gasoline in excess of twenty (20) gallons unless, under an arrangement approved by the state department of revenue, he shall purchase within the state gasoline equal to such excess. Within thirty (30) days after the close of each month, he shall file with the state department of revenue a report, on such forms and under such rules and regulations as the state department of revenue may prescribe, of all such gasoline imported by him so used within this state, and shall at the same time pay to the state department of revenue the amount of tax due for such month.

History: En. Sec. 1, Ch. 174, L. 1955;
amd. Sec. 239, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in four places.

84-6305. Definition of other words and terms.

Compiler's Notes

Section 84-1801 referred to in this section, was repealed by Sec. 20, Ch. 369,

Laws of 1969. For a similar provision in current law, see section 84-1846.

84-6306. Penalty for failure, neglect, or refusal to make statement or pay tax—notification—additional penalty for failure to comply after notification. If any importer fails, neglects, or refuses to make any statement required for any month, or to pay the license tax due for any month, within the time prescribed for the filing of such statement or the payment of such tax, there shall automatically accrue a penalty equal to one-tenth of one cent (.1¢) on each gallon of gasoline purchased during that month, the amount of such penalty shall in no case be less than five dollars (\$5.00), or, if no purchases were made, a penalty of five dollars (\$5.00), such penalty to be paid or collected in the manner hereinafter provided.

The state department of revenue shall notify any importer that fails, neglects or refuses to make any statement required for any month within the time prescribed for the filing of such statement or the payment of such tax, of such failure and if the required statement is not filed or payment of tax is not made within ten (10) days from the date of such notification, there shall automatically accrue a penalty equal to one cent (1¢) on each gallon of gasoline purchased during that month, the amount of which penalty shall in no case be less than twenty-five dollars (\$25.00), or, if no purchases were made, a penalty of twenty-five dollars (\$25.00), such penalty to be paid or collected in the manner hereinafter provided.

History: En. Sec. 6, Ch. 174, L. 1955;
amd. Sec. 240, Ch. 516, L. 1973.

partment of revenue" for "board of equalization" at the beginning of the second paragraph.

Amendments

The 1973 amendment substituted "de-

84-6307. Failure or refusal to make and file return or false return—department of revenue to prepare statement. If any importer fails or refuses to make and file a return at the time prescribed in this act, or make, willfully or otherwise, an erroneous, false, or fraudulent statement, the state department of revenue, or its duly appointed agent, shall make the statement from its or his own knowledge and from such information as it or he can obtain through testimony or otherwise. Any statement so made shall be prima facie good and sufficient for all legal purposes. As a further means of making the statement, the state department of revenue or its duly appointed agent, shall have the power to examine the books, records and papers of such importer, to ascertain the amount of tax due under the provisions of this act. From the statement so made, the state department of revenue shall determine the amount of tax due, if any, and shall add the penalty provided herein for failure to pay the tax or to file the return within the time prescribed for the payment of such tax or the filing of such return, and shall notify the importer, of the amount of tax and pen-

alty assessed together with a demand for immediate payment of the tax and penalty. If such tax and penalty is not paid within thirty (30) days, the treasurer of the state of Montana shall proceed to collect such tax and penalty in the manner prescribed in section 84-1807.

History: En. Sec. 7, Ch. 174, L. 1955; 369, Laws of 1969. For present law, see amd. Sec. 241, Ch. 516, L. 1973. section 84-1858.

Compiler's Notes

Section 84-1807 referred to in the last sentence, was repealed by Sec. 20, Ch.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

CHAPTER 64—FLIGHT PROPERTY OF AIRLINE COMPANIES—ASSESSMENT AND TAXATION

Section

- 84-6401. Definitions.
- 84-6402. Assessment of flight property.
- 84-6403. Report by airline company.
- 84-6404. Determination of value.
- 84-6405. Hearing before the state tax appeal board.
- 84-6406. Procedure on failure to file statement.
- 84-6407. Transmission of statement of amount apportioned to counties.
- 84-6408. Record of assessment and apportionment of properties.
- 84-6410. Extension of time for making report.

84-6401. Definitions. The following words and phrases, when used in this act, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

(a) to (c). * * * [Same as parent volume.]

(d) "Flight property" means aircraft fully equipped ready for flight used in air commerce.

(e) to (g). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 249, L. 1955; amd. Sec. 1, Ch. 367, L. 1969.

Amendments

The 1969 amendment deleted "within the state of Montana" from the end of subdivision (d).

84-6402. Assessment of flight property. The flight property of all scheduled airline companies operating in Montana under a certificate of convenience and necessity issued by the United States civil aeronautics board shall be assessed annually by the state department of revenue.

History: En. Sec. 2, Ch. 249, L. 1955; amd. Sec. 242, Ch. 516, L. 1973.

partment of revenue" for "board of equalization" at the end of the section.

Amendments

The 1973 amendment substituted "de-

Cross-References

Multistate tax compact, sec. 84-6701.

84-6403. Report by airline company. Every airline company engaged in air commerce in this state shall annually, on or before the first day of May, file with the department of revenue in such form as the department may require, a report under oath, showing the following:

(1) to (11). * * * [Same as parent volume.]

(12) Such other information as the department of revenue may require.

History: En. Sec. 3, Ch. 249, L. 1955; amd. Sec. 243, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted refer-

ences to the department of revenue for references to the state board of equalization in two places in the preliminary clause and in subdivision (12).

84-6404. Determination of value. The department of revenue shall determine the full and true valuation of all flight property of all airlines operating in this state or used by every scheduled airline company in air commerce. This valuation may be ascertained by:

(1) Determining the full and true valuation of all flight property, owned and operated by every scheduled airline company, as an integrated operation; and,

(2) Allocating to the state of Montana, from this total valuation, a valuation which represents this state's proper share of the valuation of the flight property, through the application of ratios, which are indicated in section 84-6403, subsections (8), (9), (10) and (11), against the total valuation.

(3) After making such assessment, the department shall give written notice thereof to the person or persons to whom the assessment is made.

History: En. Sec. 4, Ch. 249, L. 1955; amd. Sec. 2, Ch. 367, L. 1969; amd. Sec. 244, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted "of all airlines operating in this state" for "operated" after "all flight property" and deleted "in this state" at the end of the first sentence and rewrote the second sentence, which read, "In determining the valuation apportioned to this state of such flight property, the board may consider the proportion of total tonnage in the state, total

time in equated plane hours, number of revenue ton miles and number of arrivals and departures as required to be reported under section 84-6403."

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section; and added subdivision (3).

Effective Date

Section 3 of Ch. 367, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 15, 1967.

DECISIONS UNDER FORMER LAW

Basis for Assessment

Under former statute providing that board should determine valuation of all flight property used by scheduled airline in air commerce in state, assessment of airline using three types of aircraft but only one type in state was to be made only on

that portion of airline's business arising directly from aircraft used in state, and depreciated value of aircraft used in state was the base for taxation. *Western Air Lines, Inc. v. Michunovich*, 149 M 347, 428 P 2d 3, cert. den. 389 U S 952, 88 S Ct 336.

84-6405. Hearing before the state tax appeal board. After such assessment is made the state tax appeal board shall give at least ten (10) days' written notice thereof to the person or persons to whom the assessment is made, together with time and place of hearing thereon, at which time and place such person or persons, or any taxpayer may appear before the board in person, or otherwise, to show cause why such assessment should be either lowered or raised.

History: En. Sec. 5, Ch. 249, L. 1955; amd. Sec. 245, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted refer-

ences to the state tax appeal board for references to the state board of equalization; and made a minor change in phraseology.

84-6406. Procedure on failure to file statement. If any airline company shall refuse or neglect to make the statement required by this act to the department of revenue, or shall refuse or neglect to permit an inspection and examination of its property, its records, books, accounts, or other papers when requested by the department or shall refuse or neglect to appear before the department when required so to do, the department shall assess the property of such airline company according to its best judgment on available information, and may add to the assessment a penalty not exceeding ten per cent (10%) of the assessment, and such airline company shall be estopped to question or impeach the action or determination of the board thereon.

History: En. Sec. 6, Ch. 249, L. 1955;
amd. Sec. 246, Ch. 516, L. 1973.

ences to the department of revenue for references to the state board of equalization in four places.

Amendments

The 1973 amendment substituted refer-

84-6407. Transmission of statement of amount apportioned to counties. On or before the second Monday in July, the department shall apportion such assessment to the counties in or through which the airline operates. The county assessor must enter the amount of the assessment apportioned to the county in the column of the assessment roll or book which shows the total value of all property for taxation in the county. The assessment shall be assigned to class 7 having a taxable value of forty per cent (40%) of assessed value.

History: En. Sec. 7, Ch. 249, L. 1955;
amd. Sec. 247, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in the first sentence.

84-6408. Record of assessment and apportionment of properties. The state department of revenue must keep a record of all such assessments and apportionments.

History: En. Sec. 8, Ch. 249, L. 1955;
amd. Sec. 248, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-6410. Extension of time for making report. The department of revenue for good cause may extend for not to exceed thirty (30) days the time for making a report as required under section 84-6403.

History: En. Sec. 10, Ch. 249, L. 1955;
amd. Sec. 249, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

CHAPTER 65—LICENSE TAXES—RACING ASSOCIATIONS

(Repealed—Section 15, Chapter 196, Laws of 1965; Section 6, Chapter 216, Laws of 1967)

84-6502 to 84-6504. Repealed.

Repeal

These sections (Secs. 2 to 4, Ch. 57, L. 1961), relating to the taxing of racing

associations, were repealed by Sec. 6, Ch. 216, Laws 1967.

CHAPTER 66—PROPERTY TAX ON HOUSE TRAILERS

- Section
 84-6601. Definitions.
 84-6604. Penalty for failure to display or produce declaration, sticker or receipt.
 84-6605. Act restricted to trailers subject to taxation.
 84-6606. Verified declaration of destination on out-of-state mobile homes—delivery and affixing to vehicle—obtaining tax receipt—exemptions.
 84-6607. State department of revenue to make regulations.

84-6601. Definitions. As used in this act:

(1) "Mobile home" means forms of housing known as "trailers," "house trailers" or "trailer coaches" exceeding eight (8) feet in width or thirty-two (32) feet in length designed to be moved from one place to another by an independent power connected thereto.

(2) "House trailer" means; (a) A trailer or semitrailer other than a mobile home as defined in this section which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) whether mobile or stationary; or

(b) a trailer or semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, whether mobile or stationary.

(c) "dealer" means a person engaged in the distribution or sale of mobile homes.

History: En. Sec. 1, Ch. 275, L. 1965; **Amendments**
 amd. Sec. 4, Ch. 296, L. 1967.

The 1967 amendment substantially re-wrote this section. For previous text, see parent volume.

84-6604. Penalty for failure to display or produce declaration, sticker or receipt. (1) Whoever makes a false or fraudulent declaration of destination, or, when required, fails to execute a declaration of destination or fails to produce a declaration of destination or tax paid receipt, if a tax paid receipt is required, is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail for not more than six (6) months, or by a fine of not more than five hundred dollars (\$500), or both.

(2) Whoever fails to display a property tax paid sticker or to produce a property tax paid receipt from fifteen (15) days after the due date for personal property taxes of one (1) year to the due date for personal property taxes of the next year shall constitute a misdemeanor punishable by a fine of not less than ten dollars (\$10) nor more than fifty dollars (\$50) or confinement in the county jail for not more than thirty (30) days or both such fine and imprisonment.

History: En. Sec. 4, Ch. 275, L. 1965;
 amd. Sec. 7, Ch. 296, L. 1967.

Amendments

The 1967 amendment inserted subsection

(1); designated the old section as new subsection (2); substituted "Whoever fails" for "The failure" before "to display"; and deleted "the failure" before "to produce."

84-6605. Act restricted to trailers subject to taxation. The provisions of this act shall apply only to those mobile homes and house trailers, as defined in this act, subject to assessment and taxation under section 84-406 and section 84-6008.

History: En. Sec. 5, Ch. 275, L. 1965; **Amendments**
amd. Sec. 8, Ch. 296, L. 1967.

The 1967 amendment inserted "mobile homes and" before "house trailers."

84-6606. Verified declaration of destination on out-of-state mobile homes—delivery and affixing to vehicle—obtaining tax receipt—exemptions.

(1) whoever brings a mobile home into the state of Montana shall immediately upon arrival in the state execute a written declaration verified under oath stating the destination of the mobile home and such other information as the state department of revenue shall require and shall deliver the original of the declaration to whoever is on duty at the nearest port of entry station, state vehicle weight station or such other places and persons as the state department of revenue may prescribe. He shall also immediately upon arrival in the state of Montana affix a copy of the declaration to the mobile home at a conspicuous place.

(2) Whoever moves a mobile home from a point within the state of Montana to another point within or without the state of Montana shall first:

(a) Execute the declaration provided for in subsection (1) of this section, deliver the original of it to the treasurer of the county in which the move originates or to such other person as the state department of revenue shall prescribe and affix a copy of it to the mobile home to be moved at a conspicuous place;

(b) Obtain from the county treasurer of the county in which the move originates a receipt showing payment in full of property taxes due with respect to that mobile home to the date it is moved.

(3) The provisions of subsection (2) (b) of this section shall not apply whenever a person moves a mobile home:

(a) From a point without to a point within the state of Montana.

(b) Between places of business of dealers within or without the state of Montana.

(c) From the place of business of a dealer to a point within or without the state of Montana.

History: En. Sec. 5, Ch. 296, L. 1967; **Amendments**
amd. Sec. 250, Ch. 516, L. 1973.

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-6607. State department of revenue to make regulations. The state department of revenue may make reasonable rules and regulations necessary for or as an aid to effectuation of the purposes of this act.

History: En. Sec. 6, Ch. 296, L. 1967; **Amendments**
amd. Sec. 251, Ch. 516, L. 1973.

The 1973 amendment substituted "department of revenue" for "board of equalization."

CHAPTER 67—MULTISTATE TAX COMPACT

Section

84-6701. Compact adopted—text.

84-6702. Montana compact commissioner—director of revenue.

84-6703. Alternate.

84-6704. Advisory committee—members—reimbursement—meetings.

84-6701. Compact adopted—text. The “Multistate Tax Compact” is hereby enacted into law and entered into with all jurisdictions legally joining therein. Article VIII of the Multistate Tax Compact relating to interstate audits is specifically adopted.

ARTICLE I. PURPOSES.

The purposes of this compact are to :

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.
2. Promote uniformity or compatibility in significant components of tax systems.
3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
4. Avoid duplicative taxation.

ARTICLE II. DEFINITIONS.

As used in this compact :

1. “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.
2. “Subdivision” means any government unit or special district of a state.
3. “Taxpayer” means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one state.
4. “Income tax” means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.
5. “Capital stock tax” means a tax measured in any way by the capital of a corporation considered in its entirety.
6. “Gross receipts tax” means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.
7. “Sales tax” means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.
8. “Use tax” means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any

right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

ARTICLE III. ELEMENTS OF INCOME TAX LAWS.

Taxpayer Option, State and Local Taxes.

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form.

2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of \$100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the \$100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the \$100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

Coverage.

3. Nothing in this Article relates to the reporting or payment of any tax other than an income tax.

ARTICLE IV. DIVISION OF INCOME.

1. As used in this Article, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, co-operative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this Article.

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this Article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this Article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this Article, the taxpayer may elect to allocate and apportion his entire net income as provided in this Article.

3. For purposes of allocation and apportionment of income under this Article, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this Article.

5. (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

8. (a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis

of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this state if:

- (a) the individual's service is performed entirely within the state;
- (b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or
- (c) some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this state if :

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

17. Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

ARTICLE V. ELEMENTS OF SALES AND USE TAX LAWS.

Tax Credit.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates. Vendors May Rely.

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

ARTICLE VI. THE COMMISSION.

Organization and Management.

1. (a) The Multistate Tax Commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency, the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under paragraph 1 (e) of this Article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notice of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and func-

tions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees.

2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice-chairman, treasurer and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers.

3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance.

4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph 1 (i) of this Article: provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1 (i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its by-laws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any person authorized by the commission.

(f) Nothing contained in this Article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII. UNIFORM REGULATIONS AND FORMS.

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform

tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

ARTICLE VIII. INTERSTATE AUDITS.

1. This Article shall be in force only in those party states that specifically provide therefor by statute.

2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident: provided that such state has adopted this article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this Article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought

is situated. The provisions of this paragraph apply only to courts in a state that has adopted this Article.

5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

6. Information obtained by any audit pursuant to this Article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this Article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this Article.

8. In no event shall the commission make any charge against a taxpayer for an audit.

9. As used in this Article, "tax," in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

ARTICLE IX. ARBITRATION.

1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this Article in effect, notwithstanding the provisions of Article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residents within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoenas, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this Article.

8. Unless the parties otherwise agree, the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency

represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceedings.

ARTICLE X. ENTRY INTO FORCE AND WITHDRAWAL.

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

ARTICLE XI. EFFECT ON OTHER LAWS AND JURISDICTION.

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III [paragraph] (2) of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: provided that the definition of "tax" in Article VIII [paragraph] (9) may apply for the purposes of that Article and the commission's powers of study and recommendation pursuant to Article VI [paragraph] (3) may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

ARTICLE XII. CONSTRUCTION AND SEVERABILITY.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or of the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 17, L. 1969;
amd. Sec. 1, Ch. 249, L. 1973.

Compiler's Notes

The following states have adopted the Multistate Tax Compact: Alabama, Alaska, Arkansas, Florida, Hawaii, Idaho, Illinois, Indiana, Michigan, Missouri, Nebraska, Nevada, New Mexico, North Dakota, Oregon, Texas, Utah and Wyoming.

Title of Act

An act to adopt and implement the Multistate Tax Compact dealing with taxes paid by business firms.

Amendments

The 1973 amendment deleted "in the form substantially as follows" from the end of the first sentence of the preliminary paragraph; and added the second sentence to the preliminary paragraph.

Effective Date

For effective date of this act, see Article X, paragraph 1.

Cross-References

Advisory council appointed to comply with compact, sec. 82A-1803(2).

Cities and towns—taxation and license, secs. 84-4701 to 84-4737.

Income tax, secs. 84-4901 to 84-4958.

Levy of taxes, secs. 84-3801 to 84-3810.

84-6702. Montana compact commissioner—director of revenue. The director of the state department of revenue shall represent this state on the multistate tax commission.

History: En. Sec. 2, Ch. 17, L. 1969;
amd. Sec. 118, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "di-

rector of the state department of revenue" for "chairman of the state board of equalization."

84-6703. Alternate. The member representing this state on the multistate tax commission may be represented thereon by an alternate designated by him.

History: En. Sec. 3, Ch. 17, L. 1969;
amd. Sec. 119, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted "who must be a member of the state board of equalization" from the end of the section.

Repealing Clause

Section 120 of Ch. 405, Laws 1973 read "Sections 84-211, 84-429.10, 84-443, 84-444, 84-445, 84-446, 84-447, 84-453, 84-502, 84-503, 84-4732, 84-4733, 84-4734, and 84-4735, R. C. M. 1947, are repealed."

84-6704. Advisory committee — members — reimbursement — meetings. There is hereby established the multistate tax compact advisory committee composed of the member of the multistate tax commission representing this state or any alternate designated by him, the attorney general or his designee, and two members of the senate, one (1) from each of

the two (2) major political parties appointed by the senate committee on committees, and two (2) members of the house of representatives, one (1) from each of the two (2) major political parties, appointed by the speaker of the house. The chairman shall be the member of the commission representing this state. Members of the commission who are members of the legislative assembly shall be reimbursed for actual and necessary expenses incurred on commission business from any funds appropriated to implement this compact. The committee shall meet on the call of its chairman or at the request of a majority of its members, but in any event it shall meet not less than three (3) times in each year. The committee may consider any and all matters relating to recommendations of the multistate tax commission and the activities of the members in representing this state thereon.

History: En. Sec. 4, Ch. 17, L. 1969.

Board of equalization to appoint advisory council, sec. 82A-1803(2).

Cross-References

Advisory committee abolished, sec. 82A-1806.

CHAPTER 68—TOBACCO TAX (CIGARETTES EXCLUDED)

Section

84-6801. Definitions.

84-6802. Direct tax on retail customer—advance payment—notice in seller's premises—amount of tax—products excepted.

84-6803. Wholesaler to precollect and pay tax.

84-6804. Wholesaler's sale without prepayment a misdemeanor—injunctive penalty.

84-6805. Unlawful sales and offers to sell—penalty.

84-6806. Wholesaler to retain five per cent defrayment—refunds.

84-6807. Rule-making power.

84-6801. Definitions. As used in this act, the following definitions shall apply unless the context otherwise requires:

(1) The word "department" shall mean the state department of revenue of the state of Montana.

(2) The word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, organization or association, however formed.

(3) The word "cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(4) The words "sale" or "sell" shall mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution, in any manner, or by any means whatever of tobacco products, other than cigarettes.

(5) The word "wholesaler" shall mean any person who purchases tobacco products, other than cigarettes, directly from the manufacturer, or who purchases tobacco products, other than cigarettes, from any other person who purchases from the manufacturer, and who acquires such products for the purpose of bona fide sales to retail dealers, or who services retail outlets by the maintenance of an established place of business for

the purchase of tobacco products, other than cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of tobacco products. The word "retailer" shall mean any person other than a wholesaler who is engaged in the business of selling tobacco products to the ultimate consumer.

(6) The words "wholesale price" shall mean the established price for which a manufacturer sells a tobacco product, other than cigarettes, to a wholesaler or unclassified acquirer before any discount or other reduction.

History: En. Sec. 1, Ch. 12, Ex. L. 1969;
amd. Sec. 252, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted subdivision (1) for a subdivision defining "board" as the state board of equalization.

Title of Act

An act providing for the imposition of a tax on the sale of all tobacco products, not including cigarettes.

84-6802. Direct tax on retail customer—advance payment—notice in seller's premises—amount of tax—products excepted. (1) All taxes paid pursuant to the provisions of this section shall be exclusively presumed to be direct taxes on the retail consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any other person such payment shall be considered as an advance payment and shall be added to the price of tobacco products, other than cigarettes, and recovered from the ultimate consumer or user. Any person selling tobacco products, other than cigarettes, at retail shall state or separately display in the premises where such products are sold, a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section shall in no way affect the method of collection of such tax as hereinafter provided.

(2) There is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon tobacco products, other than cigarettes, sold or possessed in this state, a tax of twelve and one-half per cent (12-1/2%) of the wholesale price of such products to the wholesaler, excepting therefrom such said products as may be shipped from Montana and destined for retail sale and consumption outside the state of Montana.

History: En. Sec. 2, Ch. 12, Ex. L. 1969.

84-6803. Wholesaler to precollect and pay tax. The tax imposed shall be precollected and paid by the wholesaler to the board prior to the sale of tobacco products, other than cigarettes, to the purchaser from the wholesaler.

History: En. Sec. 3, Ch. 12, Ex. L. 1969.

84-6804. Wholesaler's sale without prepayment a misdemeanor—injunctive penalty. Any wholesaler who shall sell any tobacco products, other than cigarettes, without first making payment of the tax provided for by this act in the manner and at the time specified shall be guilty of a misdemeanor, and further shall be enjoined by an action pursued in the district court of the county of Lewis and Clark, Montana from making

further sale of tobacco products, other than cigarettes, for a period not less than one (1) month nor more than one (1) year.

History: En. Sec. 4, Ch. 12, Ex. L. 1969.

84-6805. Unlawful sales and offers to sell—penalty. It shall be unlawful for any person, individual, firm or corporation to sell or offer to sell any tobacco products subject to this tax without the tax having been prepaid as provided for in this act. Violation of this section shall constitute a misdemeanor punishable by a fine of not more than five hundred dollars (\$500) or imprisonment for not more than six (6) months.

History: En. Sec. 5, Ch. 12, Ex. L. 1969.

84-6806. Wholesaler to retain five per cent defrayment—refunds. The taxes specified in this act that are paid by the wholesaler, shall be paid to the department in full less a five per cent (5%) defrayment for his collection and administrative expense and shall be deposited by the department in the long-range building sinking fund number 338766. Refunds of the tax paid shall be made as provided in section 84-726, R. C. M. 1947, in cases where the tobacco products purchased become unsalable.

History: En. Sec. 6, Ch. 12, Ex. L. 1969;
amd. Sec. 253, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted “department” for “board” in two places.

84-6807. Rule-making power. The department is authorized to adopt rules for the effective collection and refund of the tax imposed by this act.

History: En. Sec. 7, Ch. 12, Ex. L. 1969;
amd. Sec. 254, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted “department” for “board.”

CHAPTER 69—CORPORATION INCOME TAX

Section	
84-6901.	Application of license and income taxes.
84-6902.	Short title—administration of act.
84-6903.	Rate of tax imposed—income from sources within state defined—alternative tax.
84-6904.	Offset for license taxes—income tax collected considered license tax.
84-6905.	Information return—period for assessment of tax.
84-6906.	License tax sections incorporated by reference.
84-6907.	Employment of personnel—rules and regulations.
84-6908.	Disposition of revenue.

84-6901. Application of license and income taxes. It is the intent of the legislative assembly that the corporation license tax shall be applied to all corporations subject to taxation under chapter 15, Title 84, R. C. M. 1947. The income tax provided by this act shall be applied to corporations that are not taxable under chapter 15, Title 84, R. C. M. 1947, but are taxable under an income tax.

History: En. Sec. 1, Ch. 82, L. 1971.

Title of Act

An act to subject corporations to an income tax if they are not subject to the corporation license tax; and providing an effective date.

Cross-References

Corporation license tax, sec. 84-1501 et seq.
Industrial income tax, sec. 84-4901 et seq.
Multistate tax compact, sec. 84-6701.

84-6902. Short title—administration of act. This act shall be known as and may be cited as the "Corporation Income Tax" and it shall be administered by the state department of revenue.

History: En. Sec. 2, Ch. 82, L. 1971;
amd. Sec. 255, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

84-6903. Rate of tax imposed—income from sources within state defined—alternative tax. (1) There is hereby imposed upon every corporation for each taxable year an income tax at the rate specified in section 84-1501, R. C. M. 1947, upon its net income derived from sources within this state for taxable years beginning after December 31, 1970, other than income for any period for which the corporation is subject to taxation under chapter 15, Title 84, R. C. M. 1947, according to or measured by its net income.

(2) Income from sources within this state includes income from tangible or intangible property located in or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, or interstate or foreign commerce.

(3) Pursuant to article III, section 2, of the multistate tax compact (Title 84, chapter 67, R. C. M. 1947), any corporation required to file a return under this act, and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana does not exceed one hundred thousand dollars (\$100,000) may elect to pay a tax of one-half of one per cent (.5%) of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under this section. The gross volume of sales made in Montana during the taxable year shall be determined according to article IV, sections 16 and 17, of the multistate tax compact.

History: En. Sec. 3, Ch. 82, L. 1971;
amd. Sec. 1, Ch. 367, L. 1973.

Amendments

The 1973 amendment added subsection (3).

84-6904. Offset for license taxes—income tax collected considered license tax. There shall be offset against the corporation income tax imposed for any period the amount of any tax imposed against it for the same period under chapter 15, Title 84, R. C. M. 1947. In the event that taxes, interest and penalties have been or will be assessed against, paid by or collected from a corporation under this chapter, which assessment, payment or collection should have been made under chapter 15, Title 84, R. C. M. 1947, such taxes, interest and penalties shall be considered as having been assessed, paid or collected under chapter 15, Title 84, R. C. M. 1947, as of the date they were made.

History: En. Sec. 4, Ch. 82, L. 1971.

84-6905. Information return—Period for assessment of tax. When a corporation formerly subject to tax under chapter 15, Title 84, R. C. M. 1947, becomes subject to tax under this act, it shall file an information

return for the income year in which the change occurs. The tax for the year in which the change occurs will be assessed under chapter 15, Title 84, R. C. M. 1947, and not under this act. For years subsequent to the year in which the change occurs, the tax will be assessed under this act.

History: En. Sec. 5, Ch. 82, L. 1971.

84-6906. License tax sections incorporated by reference. The provisions of the following sections of chapter 15, Title 84, R. C. M. 1947, are incorporated into this act by reference and made a part hereof.

(1) That part of section 84-1501, R. C. M. 1947, which defines the term "corporation" and that part which specifies the classes of organizations whose income shall not be taxed.

(2) Sections 84-1501.4, 84-1502, 84-1503, 84-1504, 84-1505, 84-1505.1, 84-1506, 84-1507, 84-1508, 84-1508.1, 84-1508.2, 84-1509, 84-1510, 84-1512, 84-1513, 84-1516, 84-1517, and 84-1518, R. C. M. 1947, except that the term "gross income" shall be construed as excluding the net amount of interest income from valid obligations of the United States and except that wherever the words "tax," "license tax," "license fee," "corporation excise tax," or like words appear, referring to the tax imposed under chapter 15, Title 84, R. C. M. 1947, there shall be substituted the words "income tax."

History: En. Sec. 6, Ch. 82, L. 1971.

Compiler's Notes

Section 84-1501.4, referred to in sub-

division (2) and exempting state banks from taxation, was repealed by Sec. 2, Ch. 23, Laws 1971. Banks are now subject to taxation under sec. 84-1501.6.

84-6907. Employment of personnel—rules and regulations. The state department of revenue may employ personnel and adopt rules, regulations and forms as the department finds necessary to place this act in operation and to carry out its provisions.

History: En. Sec. 7, Ch. 82, L. 1971; amd. Sec. 256, Ch. 516, L. 1973.

ences to the department of revenue for references to the state board of equalization in two places.

Amendments

The 1973 amendment substituted refer-

84-6908. Disposition of revenue. The net revenue from the tax imposed by this act shall be disposed of in the same manner as revenue from the corporation license tax as provided in section 84-1901, R. C. M. 1947.

History: En. Sec. 8, Ch. 82, L. 1971.

the act should be in effect from and after its passage and approval. Approved February 27, 1971.

Effective Date

Section 9 of Ch. 82, Laws 1971 provided

CHAPTER 70—RESOURCE INDEMNITY TRUST ACCOUNT

Section

84-7001. Short title.

84-7002. Legislative policy.

84-7003. Definitions.

84-7004. Creation of account in trust and legacy fund.

84-7005. Gross yield from mines to be reported—form—contents.

84-7006. Tax on mineral production.

84-7007. Payment of tax.

84-7008. Receipt for tax—disposition of funds.

- 84-7009. Investment of resource indemnity trust account—expenditures—minimum balance.
- 84-7010. Purpose of fund usage.
- 84-7011. Effective date of tax.
- 84-7012. Procedure in case of failure to file statement.
- 84-7013. Restricted access to records.

84-7001. Short title. This act shall be known and may be cited as “The Montana Resource Indemnity Trust Act.”

History: En. 84-7001 by Sec. 1, Ch. 497, L. 1973.

Title of Act

An act to create the resource indemnity

trust account in the trust and legacy fund and to provide for the funding of the account by imposing a tax on the gross value of product of all nonrenewable resource extracting industries.

84-7002. Legislative policy. It is the policy of this state to provide security against loss or damage to our environment from the extraction of nonrenewable natural resources. Recognizing that the total environment consists of our air, water, soil, flora, fauna, and also of those social, economic, and cultural conditions that influence our communities and the lives of our individual citizens, it is necessary that this state be indemnified for the extraction of those resources. Therefore, it is the purpose of this chapter to provide for the creation of a resource indemnity trust in order that the people and resources of Montana may long endure.

History: En. 84-7002 by Sec. 2, Ch. 497, L. 1973.

84-7003. Definitions. As used in this act:

(1) “Person” means and includes every individual, partnership, firm, association, joint-stock company, syndicate and corporation.

(2) “Mineral” means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(3) “Gross value of product” means the market value of any merchantable mineral extracted or produced during the taxable year.

(4) “Total environment” means air, water, soil, flora, fauna, and also the social, economic, and cultural conditions that influence communities and individual citizens.

(5) “Department” means department of revenue.

History: En. 84-7003 by Sec. 3, Ch. 497, L. 1973.

84-7004. Creation of account in trust and legacy fund. For the purpose of carrying out this act there is a resource indemnity trust account in the trust and legacy fund. The resource indemnity account shall be credited with all moneys received as herein provided.

History: En. 84-7004 by Sec. 4, Ch. 497, L. 1973.

84-7005. Gross yield from mines to be reported—form—contents. A person who engages in or carries on the business of mining, extracting, or producing a mineral from any quartz vein or lode, placer claim, dump or

tailings, or other place or source, shall on or before March 31 of each year make out a statement of gross yield of the mineral from each mine owned or worked by that person during the year preceding January 1 of the year in which the statement is made, and the value thereof. This form shall be in the form prescribed by the department, and shall be verified by the oath of the person, or the manager, superintendent, agent, president, or vice-president of the corporation, association, or partnership, if any, and shall be delivered to the department on or before March 31. The statement shall show the following:

(1) The name and address of the owner or lessee or operator of the mine.

(2) The description and location of the mine.

(3) The quantity of minerals extracted, produced, and treated or sold from the mine during the period covered by the statement.

(4) The amount and character of the mineral and the total yield of the mineral from the mine in constituents of commercial value; that is to say, the number of ounces of gold or silver, pounds of copper or lead, tons of coal, barrels of petroleum or other crude or mineral oil, cubic feet of natural gas or other commercially valuable constituents of the ores or mineral products or deposits measured by standard units of measurement, yielded to the person engaged in mining.

(5) The gross yield or value in dollars and cents.

History: En. 84-7005 by Sec. 5, Ch. 497, L. 1973.

84-7006. Tax on mineral production. The annual tax to be paid by the person engaged in or carrying on the business of mining, extracting, or producing a mineral shall be twenty-five dollars (\$25), together with an additional sum or amount computed on the gross value of product which may have been derived from the business work or operation within this state during the calendar year immediately preceding, at the rate of one-half of one per cent ($\frac{1}{2}$ of 1%) of the amount of gross value of product at the time of extraction from the ground, if in excess of five thousand dollars (\$5,000).

History: En. 84-7006 by Sec. 6, Ch. 497, L. 1973.

84-7007. Payment of tax. The tax imposed by this act shall be paid by each person to which the tax applies on or before March 31 on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax shall be paid to the department at the time that the statement of yield is filed with the department.

History: En. 84-7007 by Sec. 7, Ch. 497, L. 1973.

84-7008. Receipt for tax—disposition of funds. The department shall issue a receipt for the tax and promptly turn the tax over to the state treasurer for deposit in the resource indemnity trust account of the trust and legacy fund.

History: En. 84-7008 by Sec. 8, Ch. 497, L. 1973.

84-7009. Investment of resource indemnity trust account—expenditures—minimum balance. All moneys paid into the resource indemnity trust account shall be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust account shall annually be added thereto until it has reached the sum of ten million dollars (\$10,000,000). Thereafter only the net earnings may be appropriated and expended until the account reaches one hundred million dollars (\$100,000,000). Thereafter all net earnings and all receipts shall be appropriated by the legislature and expended provided that the balance in the account may never be less than one hundred million dollars (\$100,000,000).

History: En. 84-7009 by Sec. 9, Ch. 497, L. 1973.

84-7010. Purpose of fund usage. Any funds made available under this act shall be used and expended to improve the total environment and rectify damage thereto.

History: En. 84-7010 by Sec. 10, Ch. 497, L. 1973.

84-7011. Effective date of tax. The tax imposed by this act shall be first imposed for the whole calendar year 1973, and shall be based on the statement of yield prescribed in section 84-7005.

History: En. 84-7011 by Sec. 11, Ch. 497, L. 1973.

84-7012. Procedure in case of failure to file statement. If any person shall fail, refuse or neglect to make and file a statement and return within the time prescribed, the department shall, immediately after such time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with the state or from any other information which the department may be able to obtain, the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the tax is to be paid, and shall make and file a statement showing the amount of such gross value of product and shall ascertain and determine and compute and assess the amount of the tax due from, and to be paid by such person.

History: En. 84-7012 by Sec. 12, Ch. 497, L. 1973.

84-7013. Restricted access to records. The information furnished by the producer to the department of revenue for the purpose of this act shall be treated as provided in section 84-1507, R. C. M. 1947.

History: En. Sec. 13, Ch. 497, L. 1973.

CHAPTER 71—STATE DEBT COLLECTION SERVICE

Section

- 84-7101. Department of revenue authorized to establish debt collection service.
- 84-7102. Definitions.
- 84-7103. Department may assist in debt collection.
- 84-7104. Circumstances where department must assist.
- 84-7105. Authority of department to collect debt.
- 84-7106. Agency owed debt to receive all moneys collected.

- 84-7107. Write-off procedures.
- 84-7108. Circumstances under which previously written off debt may be collected.
- 84-7109. Debts not collectible under this act.
- 84-7110. State agencies to adopt rules to conform to act.
- 84-7111. Right of hearing to aggrieved persons.

84-7101. Department of revenue authorized to establish debt collection service. The department of revenue is hereby authorized to provide a collection service for the general purpose of centralizing the collection of all debts owing to the state of Montana.

History: En. 84-7101 by Sec. 1, Ch. 118, L. 1974. in the Montana department of revenue for the purpose of centralizing the collection of all debts owing to the state of Montana.

Title of Act

An act authorizing a collection service

84-7102. Definitions. In this act:

(1) The term "state agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government.

(2) The word "department" means the state department of revenue.

History: En. 84-7102 by Sec. 2, Ch. 118, L. 1974.

84-7103. Department may assist in debt collection. The department may assist in the collection of any delinquent account owing to any state agency.

History: En. 84-7103 by Sec. 3, Ch. 118, L. 1974.

84-7104. Circumstances where department must assist. Subject to, and in accordance with, rules and regulations adopted by the department, the department shall render assistance in the collection of accounts owing to any state agency if all of the following procedures have been completed to the satisfaction of the department:

(1) A state agency must make all reasonable efforts to collect money owed to it and must determine that the money and any interest or penalties therefor are uncollectible, in accordance with criteria for uncollectibility formulated by that agency.

(2) Once a state agency has determined an account owed to it uncollectible, it shall certify to the department the amount of the money, interest and penalties, as accurately as can be determined. The department may require submission by the agency of all relevant evidence and other information regarding the debt and may examine the records of any other state agency which may be pertinent in determining the uncollectibility of the debt, unless examination is specifically prohibited by law.

(3) If the department finds that the debt is uncollectible, in accordance with the criteria for uncollectibility of money due that state agency, the department shall direct the agency to write off the debt on its accounts and assign the debt to the department.

History: En. 84-7104 by Sec. 4, Ch. 118, L. 1974.

84-7105. Authority of department to collect debt. Once a debt of a state agency has been assigned to the department of revenue, the department shall have the authority to collect it, including the power to offset tax refunds due to individuals against the debt assigned by the state agency to the department of revenue, provided the department may not exercise this right of offset until the debtor has first been notified by the department and given an opportunity for a hearing.

History: En. 84-7105 by Sec. 5, Ch. 118,
L. 1974.

84-7106. Agency owed debt to receive all moneys collected. All moneys collected by the department of revenue on debts assigned to it by the various state agencies shall be deposited to the account or fund of the agency to which the debt was originally owing.

History: En. 84-7106 by Sec. 6, Ch. 118,
L. 1974.

84-7107. Write-off procedures. The department may establish procedures for canceling and writing off accounts receivable carried on the books of the various state agencies and which have been assigned to the department of revenue pursuant to section 84-7104, which are uncollectible or the continued pursuance of the collection thereof would cost the state more than the amount collected. Such procedures shall be established in accordance with section 82-110.

History: En. 84-7107 by Sec. 7, Ch. 118,
L. 1974.

84-7108. Circumstances under which previously written off debt may be collected. If a debt previously written off under section 84-7107 subsequently becomes collectible, the department shall proceed to collect the money due pursuant to sections 84-7105 and 84-7106.

History: En. 84-7108 by Sec. 8, Ch. 118,
L. 1974.

84-7109. Debts not collectible under this act. This act does not apply to unliquidated debts and to debts owed to a state agency for which a procedure for compromise, release, discharge, waiver, cancellation or other form of settlement thereof for reasons other than uncollectibility is by law made specifically applicable to such state agency.

History: En. 84-7109 by Sec. 9, Ch. 118,
L. 1974.

84-7110. State agencies to adopt rules to conform to act. All state agencies shall adopt rules, regulations and forms to participate in and carry out the provisions of this act.

History: En. 84-7110 by Sec. 10, Ch. 118, L. 1974.

84-7111. Right of hearing to aggrieved persons. Any person aggrieved from a decision or an action taken under this act shall have the

right to present his grievances in the same manner as provided by law for taxpayer appeals.

History: En. 84-7111 by Sec. 11, Ch. 118, L. 1974.

CHAPTER 72—PROPERTY TAXPAYERS INFORMATION ACT

Section

- 84-7201. Short title.
84-7202. Certification of taxable values and millage rates.
84-7203. Increase of tax revenue—advertising of intention required.
84-7204. Resolution or ordinance for increase over certified millage.
84-7205. Approval and copies of resolution or ordinance.
84-7206. Exceptions for decisions of tax appeal boards.
84-7207. Additional millage increase—readvertising and revoting.
84-7208. Increase over legal maximum not authorized—reductions permitted.

84-7201. Short title. This act may be cited as the Property Taxpayers Information Act of 1974.

History: En. 84-7201 by Sec. 1, Ch. 286, L. 1974.

hold hearings prior to increasing property taxation rates; requiring the department of revenue to certify total valuations and millage rates to taxing authorities; and providing an effective date.

Title of Act

An act to require taxing authorities to

84-7202. Certification of taxable values and millage rates. At the time that the assessment roll is prepared and published, the department of revenue shall certify to each taxing authority the taxable value within the jurisdiction of the taxing authority. The department shall also send to each taxing authority a written statement of its best estimate of the total assessed value of all new construction and improvements not included on the previous assessment roll, and the value of deletions from the previous assessment roll. Exclusive of such new construction, improvements, and deletions the department shall certify to each taxing authority a millage rate which will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department shall use ninety-five per cent (95%) of the taxable value appearing on the roll, exclusive of properties appearing for the first time on the assessment roll.

History: En. 84-7202 by Sec. 2, Ch. 286, L. 1974.

84-7203. Increase of tax revenue—advertising of intention required. No taxing authority shall budget an increased amount of ad valorem tax revenue exclusive of revenue from ad valorem taxation on properties appearing for the first time on the assessment roll, unless it advertises its intention to do so at the same time that it advertises its intention to fix its budget for the forthcoming fiscal year.

History: En. 84-7203 by Sec. 3, Ch. 286, L. 1974.

84-7204. Resolution or ordinance for increase over certified millage. No millage in excess of the department's certified millage shall be levied until a resolution or ordinance has been approved by the governing board

of the taxing authority, which resolution or ordinances must be approved by said taxing authority according to the following procedure:

(1) The taxing authority shall advertise its intent to exceed the department's certified millage in a newspaper of general circulation in the county, as provided in section 3 [84-7203] of this act. The advertisement shall state that the taxing authority will meet on a day, at a time and place fixed in the advertisement, which shall be approximately seven (7) days after the day that the advertisement is published, for the purpose of hearing comments regarding the proposed increase and to explain the reasons for the proposed increase. The meeting may coincide with the meeting on the tentative budget as required by law.

(2) The taxing authority, after the public hearing has been held in accordance with the above procedures, may adopt a resolution or ordinance levying a millage rate in excess of the certified millage. If the resolution or ordinance adopting said millage rate is not approved on the day of the public hearing, the day, time and place at which the resolution or ordinance will be scheduled for consideration and approval by the taxing authority must be announced at the public hearing. If the resolution or ordinance is to be considered at a day and time that is more than two (2) weeks from the public hearing, the taxing authority must again advertise in the same manner as provided in sections 3 [84-7203] and 4(1) [84-7204(1)] of this act.

History: En. 84-7204 by Sec. 4, Ch. 286,
L. 1974.

84-7205. Approval and copies of resolution or ordinance. The resolution or ordinance approved in the manner provided for in this act shall be forwarded to the assessor, treasurer and the department of revenue. No millage in excess of the department's certified millage can be levied until the resolution or ordinance to levy required in section 4(1) and (2) [84-7204(1) and (2)] of this act is approved by the governing board of the taxing authority and submitted to the assessor and the department of revenue.

History: En. 84-7205 by Sec. 5, Ch. 286,
L. 1974.

84-7206. Exceptions for decisions of tax appeal boards. The department shall notify each taxing authority of any change in the assessment roll which results from actions by the state or county tax appeal boards. An increase in the taxing authority's millage above that certified by the department, or adopted by resolution or ordinance of the governing body of the taxing authority, which is required solely by a reduction of the assessment roll by the state or county board of tax appeals, may be adopted without further notice.

History: En. 84-7206 by Sec. 6, Ch. 286,
L. 1974.

84-7207. Additional millage increase—readvertising and revoting. If, after the initial millage vote provided for in section 3 [84-7203] of this act, the taxing authority determines that it requires a greater millage or

fails to act in the specified period, it shall readvertise and revote as required in sections 3 and 4 [84-7203 and 84-7204] of this act.

History: En. 84-7207 by Sec. 7, Ch. 286,
L. 1974.

84-7208. Increase over legal maximum not authorized—reductions permitted. Nothing contained in this section shall serve to extend or authorize any millage in excess of the maximum millage permitted by law nor prevent the reduction of millage.

History: En. 84-7208 by Sec. 8, Ch. 286, the act should be in effect from and after its passage and approval. Approved March 25, 1974.
L. 1974.

Effective Date

Section 9 of Ch. 286, Laws 1974 provided

REVISED CODES OF MONTANA

VOLUME 6

Part 1

1974 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 6 (PART 1) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 6
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CHAPTER 1—TRADE-MARKS

Section 85-105. Penalties.

85-105. (4290) Penalties. The penalty for forging, counterfeiting, or unlawful using of trade-marks is a misdemeanor.

History: En. Sec. 3164, Pol. C. 1895; re-en. Sec. 2040, Rev. C. 1907; re-en. Sec. 4290, R. C. M. 1921; amd. Sec. 22, Ch. 513, L. 1973.

Amendments

The 1973 amendment substituted "is a misdemeanor" for "is provided in section 94-35-226" at the end of the section.

CHAPTER 3—SALE OF IMITATION INDIAN ARTICLES

Section 85-301. Definitions.

- 85-302. Imitation Indian articles to be clearly designated and segregated.
85-303. Designation of authentic Indian articles.
85-304. Violation as misdemeanor.

85-301. Definitions. As used in this act:

(1) "Indian" means a person who is enrolled or who is a lineal descendant of one enrolled upon an enrollment listing of the bureau of Indian affairs, or upon the enrollment listing of a recognized Indian tribe, domiciled in the United States.

(2) "Imitation Indian arts or crafts articles" means those made by machine, or made wholly out of synthetic or artificial materials, or articles which are not made by Indian labor or workmanship.

History: En. Sec. 1, Ch. 42, L. 1967.

tation American Indian arts and crafts articles.

Title of Act

An act regulating the retail sale of imi-

85-302. Imitation Indian articles to be clearly designated and segregated. No person shall distribute, sell, or offer for sale in this state any imitation American Indian arts or crafts articles unless the articles are at all times clearly and legibly designated as imitation. All imitation articles shall be physically segregated from authentic Indian articles for display purposes.

History: En. Sec. 2, Ch. 42, L. 1967; amd. Sec. 1, Ch. 52, L. 1973.

Amendments

The 1973 amendment added the second sentence.

85-303. Designation of authentic Indian articles. Only those articles bearing a registered trade-mark or label of authentic Indian labor or workmanship may be deemed authentic Indian arts or crafts articles.

History: En. Sec. 3, Ch. 42, L. 1967.

85-304. Violation as misdemeanor. Any person who violates this act is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 42, L. 1967.

CHAPTER 4—UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION

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85-401. Definitions. As used in this act:

(1) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(2) "Trade" and "commerce" means the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value, wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of the state.

(3) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(4) "Examination" of documentary material includes the inspection, study, or copying of such material, and the taking of testimony under oath or acknowledgment in respect to any such documentary material or copy thereof.

(5) "National advertising" means any advertising run simultaneously in five or more states and over which a local advertiser has no control.

(6) "Department" means the department of business regulation created in section 82A-401.

History: En. Sec. 1, Ch. 275, L. 1973.

Title of Act

An act to be cited as The Montana Unfair Trade Practices and Consumer Pro-

tection Act of 1973; prohibiting unfair trade practices and providing investigation procedures and penalties for violations of the act.

85-402. Unfair competition and deceptive practices unlawful. Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

History: En. Sec. 2, Ch. 275, L. 1973.

85-403. Weight given to federal interpretation—rules interpreting unfair competition and deception. (1) It is the intent of the legislature that in construing section 2 [85-402] of this act due consideration and weight shall be given to the interpretations of the federal trade commission and the federal courts relating to section 5 (a) (1) of the Federal Trade Commission Act [15 U.S.C., 45 (a) (1)], as amended; and

(2) The department may make rules and regulations interpreting the provisions of section 2 [85-402] of this act. Such rules and regulations shall not be inconsistent with the rules, regulations and decisions of the federal trade commission and the federal courts in interpreting the provisions of section 5 (a) (1) of the Federal Trade Commission Act [15 U.S.C., 45 (a) (1)], as amended.

History: En. Sec. 3, Ch. 275, L. 1973.

85-404. Exemptions from act. Nothing in this act shall apply to:

(1) actions or transactions permitted under laws administered by the Montana public service commission acting under statutory authority of this act or the United States.

(2) acts done by the retail merchants, publisher, owner, agent, or employee of a newspaper, periodical or radio or television station or advertising agency in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement and did not have a direct financial interest in the advertised product or service.

(3) National advertising shall be exempt from this act.

History: En. Sec. 4, Ch. 275, L. 1973.

85-405. Action by department to restrain unlawful acts. Whenever the department has reason to believe that any person is using, has used, or is about to knowingly use any method, act or practice declared by section 2 [85-402] of this act to be unlawful, and that proceeding would be in the public interest, the department may bring an action in the name of the state against such person to restrain by temporary or permanent injunction the use of such method, act or practice, upon the giving of appropriate notice to that person. The notice must state generally the relief sought and be served in accordance with section 13 [85-413] of this

act in at least twenty (20) days before the hearing of the action. The action may be brought in the district court in which such person resides or has his principal place of business, or, with consent of the parties, may be brought in the district court of Lewis and Clark county. The courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this act, and such injunctions shall be issued without bond.

History: En. Sec. 5, Ch. 275, L. 1973.

85-406. Restoration of property unlawfully acquired. The court may make such additional orders or judgment as may be necessary to restore to any person any moneys or property, real or personal, which may have been acquired by means of any practice in this act declared to be unlawful, including the appointment of a receiver or the revocation of a license or certificate authorizing that person to engage in business in this state, or both.

History: En. Sec. 6, Ch. 275, L. 1973.

85-407. Powers of receiver appointed by court—proof of damages—court jurisdiction. When a receiver is appointed by the court pursuant to this act, he has the power to sue for, collect, receive and take into his possession all goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice declared to be illegal and prohibited by this act, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use of employment of any unlawful practices and submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses. In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court. The court has jurisdiction of all questions arising in the proceedings and may make orders and judgments as may be required.

History: En. Sec. 7, Ch. 275, L. 1973.

85-408. Private action for damages—treble damages—notice to public agencies—attorney fees—prior judgment as evidence. (1) Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 2 [85-402] of this act, may bring an individual, but not a class action under rules of civil procedure in the district court in which the seller or lessor resides or has his principal place of business or is doing business, to re-

cover actual damages or two hundred dollars (\$200), whichever is greater. The court may, in its discretion, award up to three (3) times the actual damages sustained and may provide such equitable relief as it deems necessary or proper.

(2) Upon commencement of any action brought under subsection (1) of this section, the clerk of court shall mail a copy of the complaint or initial pleading to the department and the appropriate county attorney and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the department and the appropriate county attorney.

(3) In any action brought under this section, the court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action.

(4) Any permanent injunction, judgment or order of the court made under section 5 [85-405] of this act shall be prima facie evidence in an action brought under section 8 [this section] of this act that the respondent used or employed a method, act or practice declared unlawful by section 2 [85-402] of this act.

History: En. Sec. 8, Ch. 275, L. 1973.

85-409. Assurance of voluntary compliance. In the administration of this act, the department may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be violative of the act from any person who has engaged or was about to engage in any such method, act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of district court in which the alleged violator resides or has his principal place of business, or the district court of Lewis and Clark county. Assurance of voluntary compliance is not an admission of violation for any purpose. Matters thus closed may at any time be reopened by the department for further proceedings in the public interest, pursuant to section 5 [85-405].

History: En. Sec. 9, Ch. 275, L. 1973.

85-410. Investigative demand on unlawful practices. (1) When it appears to the department that the person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this act, or when the department believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in, any act or practice declared to be unlawful by this act, the department may execute in writing and cause to be served upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be

stated in the investigative demand, concerning the advertisement, sale or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation.

(2) At any time before the return date specified in an investigative demand, or within twenty (20) days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the district court where the person served with the demand resides or has his principal place of business or in the district court of Lewis and Clark county.

History: En. Sec. 10, Ch. 275, L. 1973.

85-411. Department power to subpoena—administer oaths—conduct hearings. To accomplish the objectives and to carry out the duties prescribed by this act, the department, in addition to other powers conferred upon it by this act, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe forms and promulgate rules and regulations as may be necessary, which rules and regulations shall have the force of law; provided that none of the powers conferred by this act may be used for the purpose of compelling any natural person to furnish testimony or evidence which might tend to incriminate him or subject him to a penalty or forfeiture; and provided further that information obtained pursuant to the powers conferred by this act shall not be made public or disclosed by the department or its employees beyond the extent necessary for law enforcement purposes in the public interest.

History: En. Sec. 11, Ch. 275, L. 1973.

85-412. Service of process. Service of any notice, demand or subpoena under this act shall be made personally within this state, but if such cannot be obtained, substitute service may be made in the manner provided in the Montana Rules of Civil Procedure.

History: En. Sec. 12, Ch. 275, L. 1973.

85-413. Judicial enforcement of department orders—contempt. If any person fails or refuses to file any statement or report, or obey any subpoena or investigative demand issued by the department, the department may, after notice, apply to the district court and, after hearing thereon, request an order:

(1) granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation;

(2) vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

(3) granting such other relief as may be required, until the person files the statement or report, or obeys the subpoena or investigative demand. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

History: En. Sec. 13, Ch. 275, L. 1973.

85-414. Violation of injunction—willful use of unlawful method—fraud. (1) Any person who violates the terms of an injunction issued under section 5 [85-405] of this act shall forfeit and pay to the state a civil penalty of not more than ten thousand dollars (\$10,000) per violation. For the purposes of this section, the district court issuing an injunction retains jurisdiction, and the cause continued, and in such cases the department acting in the name of the state may petition for recovery of civil penalties.

(2) In any action brought under section 5 [85-405] of this act, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by section 2 [85-402] of this act, the department, upon petition to the court, may recover, on behalf of the state, a civil penalty of not more than five hundred dollars (\$500) per violation.

(3) Any person who engages in a fraudulent course of conduct declared unlawful by section 2 [85-402] of this act shall, upon conviction, be fined not more than two thousand dollars (\$2,000), imprisoned for not more than one (1) year, or both, in the discretion of the court. Nothing in this subsection limits any other provision of this act.

(4) For purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of section 2 [85-402] of this act.

History: En. Sec. 14, Ch. 275, L. 1973.

85-415. Dissolution or forfeiture of corporate franchise for violation. Upon petition by the department, the district court may, in its discretion, order the dissolution or suspension or forfeiture of franchise of any corporation which violates the terms of any injunction issued under section 5 [85-405] of this act.

History: En. Sec. 15, Ch. 275, L. 1973.

85-416. Assistance and actions by county attorney—reports. It is the duty of the county attorney to lend to the department such assistance as the department may request in the commencement and prosecution of actions pursuant to this act, or, the county attorney may institute and prosecute actions in the same manner as provided for the department. If an action is prosecuted by the county attorney alone, he shall notify the department as to the nature of the action and the parties to the action within thirty (30) days of the filing of the action. The county attorney shall make a report thereon to the department within thirty (30) days of the final disposition of the matter.

History: En. Sec. 16, Ch. 275, L. 1973.

85-417. County attorney's investigator. The county attorney in first and second class counties may designate an employee to act as a full-time investigator.

History: En. Sec. 17, Ch. 275, L. 1973.

Separability Clause

Section 18 of Ch. 275, Laws 1973 read "If any provision of this act is declared unconstitutional, or the application to

any person or circumstances is held invalid, the constitutionality of the remainder of the act and its applicability to other persons and circumstances is not affected."

85-418. Short title. This act shall be cited as the "Montana Unfair Trade Practices and Consumer Protection Act of 1973."

History: En. Sec. 19, Ch. 275, L. 1973.

CHAPTER 5—DOOR-TO-DOOR SALES

Section 85-501. Purpose.

85-502. Definitions.

85-503. Buyer's right to cancel home solicitation sale—time allowed—notice—return of goods.

85-504. Notice to buyer of right to cancel—form and contents—notice of cancellation.

85-505. Repayment to buyer canceling—liability for failure to repay—retention of goods by buyer.

85-506. Redelivery of goods—care of goods by buyer.

85-501. Purpose. The purpose of this act is to afford consumers, subjected to high pressure door-to-door sales tactics, a "cooling-off" period.

History: En. Sec. 1, Ch. 426, L. 1973.

Title of Act

An act to provide for a three (3) day cooling-off period on door-to-door sales contracts.

85-502. Definitions. As used in this act:

(1) "Consumer transaction" means a transaction where the money, property, or service which is the subject of the transaction is primarily for personal, family or household purposes.

(2) "Home solicitation sale" means a consumer transaction in which the purchase price is twenty-five dollars (\$25) or more, and the seller or a person acting for him, is a person doing business who engages in a personal solicitation of a sale at a residence of the buyer and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him. A sale which but for the fact that it is a cash sale would be a home solicitation sale shall be deemed a home solicitation sale if the seller makes or provides a loan to the buyer or obtains or assists in obtaining a loan for the buyer to pay any part of the purchase price. The term "home solicitation sale" does not include a transaction

(a) made pursuant to a pre-existing revolving charge account, or pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, or

(b) in which the buyer has a right of cancellation pursuant to federal law.

History: En. Sec. 2, Ch. 426, L. 1973.

85-503. Buyer's right to cancel home solicitation sale—time allowed—notice—return of goods. (1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer or any other person obligated for any part of the purchase price may cancel a home solicitation sale until midnight of the third business day after the day on which the buyer has signed an agreement or offer to purchase relating to such sale.

(2) Cancellation occurs when written notice of cancellation is given to the seller.

(3) Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation need not take the form prescribed and shall be sufficient if it indicates the intention of the buyer not to be bound.

(5) A home solicitation sale may not be canceled if in the case of goods, the goods cannot be returned to the seller in substantially the same condition as when received by the buyer.

History: En. Sec. 3, Ch. 426, L. 1973.

85-504. Notice to buyer of right to cancel—form and contents—notice of cancellation. (1) The seller shall furnish the buyer a notice which shall contain the statement set forth in paragraph (a) and printed in capital and lower case letters of not less than twelve (12) point bold-faced type with the seller's name and business address and the statement set forth in paragraph (b),

(a) **YOU MAY CANCEL THIS SALE WITHIN THREE BUSINESS DAYS.**

If you decide within three days that you want to cancel the sale, tear off and mail the bottom of this card. To cancel, the card must be mailed **BY CERTIFIED MAIL** within three days after you sign the contract.

(date)

(b) **CONTRACT SIGNED**

I hereby cancel this sale.

(Buyer's signature)

(2) Until the seller has complied with this section the buyer or any other person obligated for any part of the purchase price may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel; provided, however, that failure to mail the cancellation by certified mail does not nullify the cancellation as long as the cancellation is mailed within the prescribed time period. The period prescribed by section 3 [85-503] shall begin to run from the time the seller complies with this section.

History: En. Sec. 4, Ch. 426, L. 1973.

85-505. Repayment to buyer canceling—liability for failure to repay—retention of goods by buyer. (1) Except as provided in this section, within ten (10) days after a home solicitation sale has been canceled or an offer to purchase revoked, the seller shall tender to the buyer any payments made by the buyer and any note of other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) If the seller refuses within the period prescribed by subsection (1) to return the cash down payment or goods tendered as down payment, he shall be liable to the buyer for the entire down payment and if the buyer is successful in his action therefor the court shall also award him one hundred dollars (\$100) plus reasonable attorney's fees and costs.

(4) Until the seller has complied with this section the buyer may retain possession of goods delivered to him by the seller and shall have a lien on the goods in his possession or control for any recovery to which he may be entitled.

History: En. Sec. 5, Ch. 497, L. 1973.

85-506. Redelivery of goods—care of goods by buyer. (1) Except as provided by subsection (4) of section 5 [85-505], within a reasonable time after a home solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale but need not tender at any place other than his residence. If the seller fails to demand possession of such goods within a reasonable time after cancellation or revocation, the goods shall become the property of the buyer without obligation to pay for them. For the purpose of this section, forty (40) days shall be presumed to be a reasonable time.

(2) The buyer shall take reasonable care of the goods in his possession both before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk and such goods must be returned in substantially the same condition as received.

History: En. Sec. 6, Ch. 426, L. 1973.

TITLE 86—TRUSTS AND USES

- Chapter 5. Trusts for benefit of third persons—obligations, powers and rights of trustees, 86-511, 86-513.
7. Miscellaneous trusts, 86-707.
 8. Management of institutional funds, 86-801 to 86-809.
 9. Trustees' Powers Act, 86-901 to 86-911.

CHAPTER 1—TRUSTS AND USES IN RELATION TO REAL PROPERTY

86-103. (6785) Transfer to one for money paid by another, etc.

Conveyances between Persons in Confidential Relationships

In suit by beneficiaries to recover from deceased's brother stock allegedly belonging to estate, exception to general rule raising presumption of gift in favor of

person to whom property is transferred when person making payment and transferee stand in confidential relation did not apply to transfer from deceased to brother. *Detra v. Bartoletti*, 150 M 210, 433 P 2d 485.

CHAPTER 2—TRUSTS IN GENERAL—NATURE AND CREATION

86-210. (7887) Involuntary trust resulting from fraud, etc.

Parent and Child

Constructive trust would not be imposed on lands deeded son by aged mother in absence of evidence that son gained land by accident, mistake, undue influence, violation of trust or other wrongful act or by constructive fraud. *Bodine v. Bodine*, 149 M 29, 422 P 2d 650.

of the land, and the conveyance of land, prepared by grantee's attorney, had been to grantee and himself personally rather than to his church; under these circumstances, cancellation of the conveyance was proper. *Hensley v. Stevens*, 156 M 486, 481 P 2d 694.

Pastoral Relationship

Evidence supported findings of fraud and undue influence constituting pastor an involuntary trustee of land conveyed to him, where the grantor had made substantial contributions to grantee's ministry, had financed a missionary trip for him, and had conveyed the land, intending it for use in the church work, on grantee's promise to reconvey a portion of it, but the grantee had failed to keep promises to take grantor on the missionary trip and to reconvey a portion

Transfer in Contemplation of Death

Where deceased, engaged in cattle partnership with his sister and her husband, during his last illness transferred bank account and interest in cattle to his sister and her husband, obligating them to pay all bills and expenses surrounding his illness and transfer some money to deceased's son, the sister and her husband were involuntary trustees of the property transferred from which they had paid expenses of deceased's last illness. *Marshall v. Minlschmidt*, 148 M 263, 419 P 2d 486, 488.

CHAPTER 3—TRUSTEE'S OBLIGATIONS—SALE, MORTGAGE OR LEASE OF TRUST PROPERTY

86-327. Repealed.

Repeal

Section 86-327 (Sec. 1, Ch. 66, L. 1965), authorizing fiduciary to hold property

received even though not qualified investments, was repealed by Sec. 11, Ch. 297, Laws of 1974.

CHAPTER 5—TRUSTS FOR BENEFIT OF THIRD PERSONS—OBLIGATIONS, POWERS AND RIGHTS OF TRUSTEES

Section 86-511. Compensation of trustee.

86-513. Trustee appointed by will, deed or agreement—income trust beneficiary—annual statement.

86-511. (7918) Compensation of trustee. When a declaration of trust, created by will or otherwise, is silent upon the subject of or the rate or amount of compensation, the trustee is entitled to such compensation as may be reasonable under the circumstances.

History: En. Sec. 3031, Civ. C. 1895; re-en. Sec. 5403, Rev. C. 1907; amd. Sec. 7918, R. C. M. 1921; amd. Sec. 1, Ch. 65, L. 1965. Cal. Civ. C. Sec. 2274. Field Civ. C. Sec. 1206.

Amendment

The 1965 amendment inserted "created

by will or otherwise"; inserted "or the rate or amount of" before "compensation"; substituted "such compensation as may be reasonable under the circumstances" for "the same compensation as an executor"; and deleted second and third sentences, for text of which see parent volume.

86-513. Trustee appointed by will, deed or agreement—income trust beneficiary—annual statement. The trustee or trustees appointed by any will, deed or agreement heretofore or hereafter executed shall mail or deliver at least annually to each income trust beneficiary a written itemized statement of all current receipts and disbursements made by the trustee of the funds of the trust, both principal and income, and upon the request of any such beneficiary shall furnish him an itemized statement of all property then held by such trustee, and may also file any such statement in the district court of the county in which the trustee or one of the trustees resides.

In addition thereto any such trustee or trustees, whenever it or they so desire, may file in the district court of the county in which the trustees or one of the trustees resides an intermediate account under oath showing:

- (1) the period covered by the account;
- (2) the total principal with which the trustee is chargeable according to the last preceding account or the inventory if there is no preceding account;
- (3) an itemized statement of all principal funds received and disbursed during such period;
- (4) an itemized statement of all income received and disbursed during such period, unless waived;
- (5) the balance of such principal and income remaining at the close of such period and how invested;
- (6) the names and addresses of all living beneficiaries, including contingent beneficiaries, of the trust, and a statement as to any such beneficiary known to be under legal disability;
- (7) a description of any possible unborn or unascertained beneficiary and his interest in the trust fund.

In addition thereto, after the time for termination of the trust shall have arrived, the trustee or trustees may file a final account in similar manner.

Upon the petition of any settlor or of any beneficiary of such a trust, after due notice thereof to the trustee, the district court in the county where the trustee or one of the trustees resides may direct the

trustee or trustees thereof to file in said court such an account at any time subsequent to one year from the day on which such a report was last filed, or if none, then after one (1) year from the inception of the trust.

When any such account shall have been filed, the clerk of the court where filed shall fix a return day therefor and issue a notice as provided for herein. If each of the beneficiaries and the guardians and guardians ad litem, if any, is personally served with a copy of the notice, whether within or outside the state of Montana, at least twenty-five (25) days prior to the return day, then no publication of the notice shall be required; otherwise the trustee or trustees shall cause notice as provided for herein to be given by publishing the same at least once a week for three (3) successive weeks preceding the return day, the first publication to be at least twenty-five (25) days preceding the return day, such publication to be in a newspaper of general circulation in the county, or if none, then in adjoining county. And in any event, at least twenty-five (25) days prior to the return day, a copy of the notice shall be either served upon each beneficiary not represented by guardian or guardian ad litem or mailed to each such beneficiary not so served at such beneficiary's address last known to the trustee; and shall be either served upon each guardian and guardian ad litem, or mailed to each such guardian and guardian ad litem not so served at such guardian's or guardian ad litem's address last known to the trustee. Proof of service of the notice may be made by affidavit, as provided for service of summons in civil actions, or by written admission of service signed by the person served. The notice shall state the time and place for the return day, the name or names of the trustee or trustees who have filed the account, that the account has been filed, that the court is asked to settle such account, and that any objections or exceptions thereto must be filed with the clerk of said court on or before such return day.

Upon or before the return day, any beneficiary of the trust may file his written objections or exceptions to the account filed or to any action of the trustee or trustees set forth therein. The court may appoint either the legal guardian of a beneficiary, or a guardian ad litem to represent the interest of any such beneficiary who is an infant or of unsound mind or otherwise legally incompetent, or who is yet unborn or unascertained, and such beneficiary shall be bound by any action taken by such representative. Every unborn or unascertainable beneficiary shall be concluded by any action taken by the court for or against any living beneficiary of the same class or whose interests are similar to the interests of such unborn or unascertainable beneficiary.

At the same time, or at some later day fixed by the court if so requested by one or more of the parties, the court, without the intervention of a jury and after hearing all the evidence submitted, shall determine the correctness of the account and the validity and propriety of all actions of the trustee or trustees set forth therein including

the purchase, retention and disposition of any of the property and funds of the trust, and shall render its decree either approving or disapproving the same or any part thereof, and, in addition, may surcharge the trustee or trustees for all losses, if any, caused by negligent or willful breaches of trust.

The decree so rendered shall be deemed final, conclusive and binding upon all the parties interested including all incompetent, unborn and unascertained beneficiaries of the trust, subject only to the right of appeal hereinafter stated.

The decree so rendered shall be a final order from which any party in interest may appeal as in civil actions to the district court of the state of Montana.

This chapter shall not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiaries, investment trusts, voting trusts, insurance trusts prior to the death of the insured, trusts in the nature of mortgages or pledges, trusts created by judgment or decree of a federal court or of the district court when not sitting in probate, liquidation trusts or trusts for the sole purpose of paying dividends, interest or interest coupons, salaries, wages or pensions; nor shall this chapter apply to executors, administrators or guardians.

The settlor of any trust governed by this chapter may waive any or all of the provisions of this act requiring periodical statements to beneficiaries or may add additional duties in the instrument creating the trust; and any beneficiary entitled to an accounting under this act may waive such an accounting by a separate instrument delivered to the trustee or trustees.

History: En. Sec. 1, Ch. 24, L. 1969.

CHAPTER 6—EXTINGUISHMENT, REVOCATION AND VACATION OF TRUSTS—SUCCESSION

86-601. (7920) Trust—how extinguished.

Life Income

Where sole purpose and object of trust were payment of income for life to testator's wife, mother, sister and son, and such obligations were either fulfilled or

no longer possible of fulfillment, trial court properly terminated trust. Testamentary Trust of Child, 153 M 349, 457 P 2d 447.

86-607. (7926) Repealed.

Repeal

Section 86-607 (Sec. 3051, Civ. C. 1895), relating to survivorship between co-trus-

tees, was repealed by Sec. 11, Ch .297, Laws of 1974.

CHAPTER 7—MISCELLANEOUS TRUSTS

Section 86-707. Charitable trusts—federal tax laws.

86-707. Charitable trusts—federal tax laws. (1) Notwithstanding any provision to the contrary in the governing instrument or under any other

law of this state and except as otherwise provided by court decree entered after the effective date of this act, the trustee of a trust, whenever created, which is or is treated as a private foundation or a split-interest trust as defined in sections 509 and 4947, respectively, of the Internal Revenue Code of 1954, as in effect on the effective date of this act, during the period it is, or is treated as, a private foundation or split-interest trust as so defined:

(a) shall not engage in any act of self-dealing as defined in section 4941(d) thereof;

(b) shall distribute the trust income for each taxable year at such time and in such manner as not to subject the trust to the tax on undistributed income imposed by section 4942 thereof;

(c) shall not, if section 4943 thereof is applicable, retain any excess business holdings as defined in subsection (c) of that section;

(d) shall not, if section 4944 thereof is applicable, make any investment in such manner as to subject the trust to tax under that section; and

(e) shall not make any taxable expenditure as defined in section 4945(d) thereof.

(2) The trustee of a trust, whenever created, which is, or is treated as, a private foundation or a split-interest trust as defined in sections 509 and 4947, respectively, of the Internal Revenue Code of 1954, as in effect on the effective date of this act, may amend the terms of the governing instrument to the extent necessary to bring the trust into conformity with the requirements for:

(a) termination of private foundation status in the manner described in section 507(b) thereof;

(b) exemption of the trust from the taxes imposed by sections 4941 to 4945, inclusive, thereof, including the addition of a power to invade principal to the extent necessary to meet the requirements of section 4942: or

(c) exclusion of the trust from private foundation status under section 509(a)(3) thereof, and for this latter purpose may release any power contained in the governing instrument, may reduce or limit the charitable organizations or classes of charitable organizations in whose favor a power to select may be exercised and may appoint new or additional trustees. If the trust is for the benefit of one or more named charitable organizations, the trustee shall first obtain the consent of those organizations before making any amendment under subparagraph (c).

History: En. 86-707 by Sec. 1, Ch. 332, L. 1974.

Compiler's Notes

Sections 507, 509, 4941 to 4945 and 4947 of the Internal Revenue Code of 1954, cited in this section, are compiled in the United States Code as Tit. 26, secs. 507, 509, 4941 to 4945 and 4947.

Title of Act

An act to conform charitable trusts and corporations which are private foundations within the meaning of the Internal Revenue Code with the requirements of section 508(E) of the Internal Revenue Code by restricting certain activities; providing for exceptions; and providing an effective date.

CHAPTER 8—MANAGEMENT OF INSTITUTIONAL FUNDS

Section 86-801. Definitions.

- 86-802. Endowment funds subject to appropriation and expenditure.
- 86-803. Donor's intention restricting expenditure of net appreciation.
- 86-804. Allowable investments.
- 86-805. Delegation of investment authority—advisory service.
- 86-806. Ordinary business care and prudence.
- 86-807. Release of restrictions in gift instrument.
- 86-808. Uniformity of construction.
- 86-809. Citation of act.

86-801. Definitions. In this act:

(1) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

(2) "Institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include

(a) a fund held for an institution by a trustee that is not an institution, or

(b) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

(3) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(4) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(5) "Historic dollar value" means the aggregate fair value in dollars of

(a) an endowment fund at the time it became an endowment fund,

(b) each subsequent donation to the fund at the time it is made, and

(c) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund.

The determination of historic dollar value made in good faith by the institution is conclusive.

(6) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund.

History: En. Sec. 1, Ch. 389, L. 1973.

Title of Act

An act to establish guidelines for the management and use of investments held by eleemosynary institutions and funds.

86-802. Endowment funds subject to appropriation and expenditure. The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an

endowment fund over the historic dollar value of the fund as is prudent under the standard established by section 6 [86-806]. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument or the charter of the institution.

History: En. Sec. 2, Ch. 389, L. 1973.

86-803. Donor's intention restricting expenditure of net appreciation. Section 2 [86-802] does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income," "interest," "dividends," or "rents, issues or profits," or "to preserve the principal intact," or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after the effective date of this act.

History: En. Sec. 3, Ch. 389, L. 1973.

86-804. Allowable investments. In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or if the applicable law other than law relating to investment by a fiduciary, may:

(1) invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships or individuals, and obligations of any government or subdivision or instrumentality thereof;

(2) retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(3) include all or part of any institutional fund in any pooled or common fund maintained by the institution; and

(4) invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

History: En. Sec. 4, Ch. 389, L. 1973.

86-805. Delegation of investment authority—advisory service. Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may:

(1) delegate to its committees, officers or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds;

(2) contract with independent investment advisers, investment counsel or managers, banks, or trust companies, so to act; and

(3) authorize the payment of compensation for investment advisory or management services.

History: En. Sec. 5, Ch. 389, L. 1973.

86-806. Ordinary business care and prudence. In the administration of the powers to appropriate appreciation, to make and retain investments and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long- and short-term needs of the institution in carrying out its educational, religious, charitable or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends and general economic conditions.

History: En. Sec. 6, Ch. 389, L. 1973.

86-807. Release of restrictions in gift instrument. (1) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(2) If written consent of the donor cannot be obtained by reason of his death, disability, unavailability or impossibility of identification, the governing board may apply in the name of the institution to the appropriate court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

(3) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable or other eleemosynary purposes of the institution affected.

(4) This section does not limit the application of the doctrine of cy pres.

History: En. Sec. 7, Ch. 389, L. 1973.

Separability Clause

Section 8 of Ch. 389, Laws 1973 read "If any provision of this act or the application thereof to any person or

circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable."

86-808. Uniformity of construction. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

History: En. Sec. 9, Ch. 389, L. 1973.

86-809. Citation of act. This act may be cited as the "Uniform Management of Institutional Funds Act."

History: En. Sec. 10, Ch. 389, L. 1973.

CHAPTER 9—TRUSTEES' POWERS ACT

Section 86-901.	Severability.
86-902.	Definitions.
86-903.	Trust instruments—limitation—incorporation.
86-904.	Powers of trustee.
86-905.	Transfer of office prohibited.
86-906.	Supervision by court.
86-907.	Multiple trustees—majority and minority.
86-908.	Effective date of provisions.
86-909.	Uniformity—construction.
86-910.	Short title.
86-911.	Repealing.

86-901. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

History: En. 86-901 by Sec. 10, Ch. 297, L. 1974.

Title of Act

An act specifying the powers of trustees; providing an effective date; and repealing sections 86-327, and 86-607, R. C. M. 1947.

Compiler's Notes

Other states which have adopted the Uniform Trustees' Powers Act include: Idaho, Kansas, Mississippi, North Carolina, New Hampshire and Wyoming.

86-902. Definitions. As used in this act: (1) "Trust" means an express trust created by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both; "trust" does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court not sitting in probate, a liquidation trust, or a trust for the primary purpose of paying dividends, interests, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution, or other trust the nature of which does not admit of general trust administration.

(2) "Trustee" means an original, added, or successor trustee.

(3) "Prudent man" means a trustee who in investing, reinvesting, purchasing, acquiring, selling and managing property for another, shall exercise the judgment and care, under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of their capital. Within the limitations of the

foregoing standard, and subject to any express provisions or limitations contained in any particular trust instrument, a trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, and stocks, preferred or common, which men of prudence, discretion and intelligence acquire for their own account.

History: En. 86-902 by Sec. 1, Ch. 297,
L. 1974.

86-903. Trust instruments—limitation—incorporation. (1) The trustee has all powers conferred upon him by the provisions of this act unless limited in the trust instrument.

(2) An instrument which is not a trust under section 1(1) [86-902(1)] may incorporate any part of this act by reference.

History: En. 86-903 by Sec. 2, Ch. 297,
L. 1974.

86-904. Powers of trustee. (1) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent man would perform for the purposes of the trust including but not limited to the powers specified in subsection (3).

(2) In the exercise of his powers including the powers granted by this act, a trustee has a duty to act with due regard to his obligation as a fiduciary.

(3) A trustee has the power, subject to subsections (1) and (2):

(a) to collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made; and the assets may be retained even though they include an asset in which the trustee is personally interested or which is not otherwise a qualified investment;

(b) to receive additions to the assets of the trust from any source;

(c) to continue or participate in the operation of any business or other enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(d) to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;

(e) to invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law;

(f) to deposit trust funds in a bank, including a bank operated by the trustee;

(g) to acquire or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(h) to make **ordinary** or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(i) to subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;

(j) to enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust;

(k) to enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(l) to grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset;

(m) to vote a security, in person or by general or limited proxy, and enter into voting trusts;

(n) to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(o) to sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise and retain any property received pursuant thereto;

(p) to hold a security in the name of a nominee or in other form without disclosure of the trust, so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the stock so held;

(q) to insure the assets of the trust against damage or loss, and the trustee against liability with respect to third persons;

(r) to borrow money from any source to be repaid from trust assets or otherwise; to advance money for the protection of the trust, and for all expenses, losses, and liability sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;

(s) to pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;

(t) to pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;

(u) to allocate items of income or expense to either trust income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(v) to pay any property distributable to a beneficiary under disability, without liability to the trustee, to the beneficiary or for use of the beneficiary either to his parent, his guardian, person with whom he resides or others;

(w) to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation;

(x) to employ persons, including attorneys, auditors, investment advisers, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of his administrative duties;

(y) to prosecute or defend actions, claims or proceedings for the protection of trust assets and of the trustee in the performance of his duties;

(z) to execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee.

History: En. 86-904 by Sec. 3, Ch. 297,
L. 1974.

86-905. Transfer of office prohibited. The trustee shall not transfer his office to another or delegate the entire administration of the trust to a co-trustee or another.

History: En. 86-905 by Sec. 4, Ch. 297,
L. 1974.

86-906. Supervision by court. (1) This act does not affect the power of a court of competent jurisdiction for cause shown and upon petition of the trustee or affected beneficiary and upon appropriate notice to the affected parties to relieve a trustee from any restrictions on his power that would otherwise be placed upon him by the trust or by this act.

(2) If the duty of the trustee and his individual interest or his interest as trustee of another trust, conflict in the exercise of a trust power, the power may be exercised only by court authorization, except as provided in sections 3(3)(a), (d), (f), (r), and (x) [86-904(3)(a), (d), (f), (r), and (x)], upon petition of the trustee. Under this section, personal profit or advantage to an affiliated or subsidiary company or association is personal profit to any corporate trustee.

History: En. 86-906 by Sec. 5, Ch. 297,
L. 1974.

86-907. Multiple trustees—majority and minority. (1) Any power vested in three (3) or more trustees may be exercised by a majority, but a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise.

(2) If two (2) or more trustees are appointed to perform a trust, and if any of them is unable or refuses to accept the appointment, or, having accepted, ceases to be a trustee, the surviving or remaining trustees shall perform the trust and succeed to all the powers, duties, and discretionary authority given to the trustees jointly.

(3) This section does not excuse a co-trustee from liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust.

History: En. 86-907 by Sec. 6, Ch. 297,
L. 1974.

86-908. Effective date of provisions. Except as specifically provided in the trust, the provisions of this act apply to any trust established after the effective date of this act and to any trust asset acquired by the trustee after the effective date of this act.

History: En. 86-908, by Sec. 7, Ch. 297,
L. 1974.

86-909. Uniformity—construction. This act shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. 86-909 by Sec. 8, Ch. 297,
L. 1974.

86-910. Short title. 'This act may be cited as the "Montana Trustees' Powers Act."

History: En. 86-910 by Sec. 9, Ch. 297,
L. 1974.

86-911. Repealing. Sections 86-327, and 86-607, R. C. M. 1947, are repealed.

History: En. 86-911 by Sec. 11, Ch. 297,
L. 1974.

Effective Date

Section 12 of Ch. 297, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 25, 1974.

TITLE 87—UNEMPLOYMENT COMPENSATION

Chapter 1. The unemployment compensation law, 87-103 to 87-107, 87-109 to 87-111, 87-117, 87-118, 87-120, 87-124, 87-129, 87-136, 87-145, 87-148, 87-149.

CHAPTER 1—THE UNEMPLOYMENT COMPENSATION LAW

- Section 87-103. Benefits.
87-104. Duration of benefits.
87-105. Benefit eligibility conditions.
87-106. Disqualification for benefits.
87-107. Claims for benefits.
87-109. Contributions.
87-110. Period, election and termination of employer's coverage.
87-111. Unemployment compensation account—establishment and control.
87-117. Employment security commission—organization.
87-118. Divisions.
87-120. Administration—duties and powers of commission.
87-124. Records and reports.
87-129. Reciprocal benefit arrangements.
87-136. Collection—reciprocity with other states in effecting collection of unpaid unemployment compensation taxes.
87-145. Penalties—falsity or willful nondisclosure—violations by employer or agent—violation of act or regulations—wrongfully collecting benefits.
87-148. Definitions.
87-149. Definitions—continued.

87-103. Benefits. (a) Payment of benefits. Benefits are payable from the fund to any individual who is or becomes unemployed and eligible for benefits as is herein prescribed; provided, however, that wages earned for services performed as an employee representative as defined in the Railroad Unemployment Insurance Act (52 Stat. 1094), or for services performed for an employer, as defined in said act, shall not be included for the purposes of determining eligibility or weekly benefit amount under this act. All benefits shall be paid through public employment offices in the state of Montana, or other agencies designated by the division, in accordance with such rules and regulations as the division may prescribe.

(b) Weekly benefit amount. Any individual whose benefit year begins on or after July 1, 1971, shall receive as his weekly benefit amount, an amount equal to one twenty-sixth ($1/26$) of his total wages for insured work paid during the calendar quarter of his base period in which his wages were highest. Such weekly benefit amount, if not a multiple of one dollar (\$1), shall be rounded to the nearest multiple of one dollar (\$1).

On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before such date for the preceding calendar year shall be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on such contribution reports. The amount thus obtained shall be divided by fifty-two (52) and the average weekly wage, rounded to the nearest cent, thus determined. Fifty per cent (50%) of the

average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year. Such maximum weekly benefit amount if not a multiple of one dollar (\$1), shall be computed to the nearest multiple of one dollar (\$1).

The minimum weekly benefit amount shall be twelve dollars (\$12).

The division shall prepare and publish annually a benefit schedule in accordance with the provisions of this subsection.

(c) Qualifying wages. To qualify as an insured worker an individual must have been paid wages for insured work in the quarters of his base period, other than the quarter in which his wages were highest, an amount totaling not less than thirteen (13) times his weekly benefit amount.

(d) Wage record. The division shall maintain a record of the wages paid to an individual in accordance with wages earned by him for employment by employers during each quarter.

(e) * * * [Same as parent volume.]

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973.

Amendments

The 1969 amendment made substantial deletions at the beginning and end of the first sentence in subsection (a); rewrote the benefits schedule, generally increasing the amounts payable; increased the maximum weekly benefit from \$34 to \$42; reduced the minimum weekly benefit from \$15 to \$13; rewrote subsection (c) to substitute the requirement of earnings totaling one and one-half times the high-quarter earnings for a requirement of \$100 in earnings other than in the high quarter; and made numerous minor changes in phraseology.

The 1971 amendment completely rewrote subsections (b) and (c), slightly reducing benefits in the lower wage brackets and slightly increasing benefits in the higher wage brackets, reducing the minimum weekly benefit from \$13 to \$12, and increasing the maximum weekly benefit from \$42 to \$47 effective July 1, 1971 and to \$52 effective January 1, 1972.

The 1973 amendment substituted "division" for "commission" throughout the section; deleted from subsection (b) first and second paragraphs setting minimum and maximum weekly benefit amounts; added new second, third and fourth paragraphs to subsection (b); substituted "in the quarters of his base period, other than the quarter in which his wages were highest, an amount" in subsection (c) for "in his base period"; and substituted "thirteen (13) times his weekly benefit amount" at the end of subsection (c) for "one and one-half (1½) times his high-quarter wages during his base period including the high quarter."

87-104. Duration of benefits. The maximum total amount of benefits payable to any eligible individual during any benefit year shall be:

(a)(1) Thirteen (13) times his weekly benefit amount if he is qualified as an insured worker as defined in section 87-103 (c), and does not qualify under subsection (2) or (3) below.

(2) Twenty (20) times his weekly benefit amount if in addition to meeting the requirements of section 87-103 (c), he has been paid wages of one hundred dollars (\$100) or more for insured work in each of two (2) quarters in his base period other than the quarter in which his wages were highest.

(3) Twenty-six (26) times his weekly benefit amount if in addition to meeting the requirement of section 87-103 (c), he has been paid wages of one hundred dollars (\$100) or more for insured work in each of three (3) quarters in his base period other than the quarter in which his wages were highest.

(4) Extended benefits if he is qualified as provided under the provisions of this subsection.

(a) Definitions.—As used in this section, unless the context clearly requires otherwise—

(1) “Extended benefit period” means a period which

(A) begins with the third week after whichever of the following weeks occurs first:

(i) a week for which there is a national “on” indicator, or

(ii) a week for which there is a state “on” indicator; and

(B) ends with either of the following weeks, whichever occurs later:

(i) the third week after the first week for which there is both a national “off” indicator and a state “off” indicator, or

(ii) the thirteenth consecutive week of such period;

Provided, that no extended benefit period may begin by reason of a state “on” indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) There is a “national ‘on’ indicator” for a week if the U. S. Secretary of Labor determines that for each of the three (3) most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and one-half per cent ($4\frac{1}{2}\%$).

(3) There is a “national ‘off’ indicator” for a week if the U. S. Secretary of Labor determines that for each of the three (3) most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states was less than four and one-half per cent ($4\frac{1}{2}\%$).

(4) There is a “state ‘on’ indicator” for this state for a week if the commission determines, in accordance with the regulations of the U. S. Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this act—

(A) equaled or exceeded one hundred and twenty per cent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years, and

(B) equaled or exceeded four per cent (4%).

(5) There is a “state ‘off’ indicator” for this state for a week if the commission determines, in accordance with the regulations of the U. S. Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this act—

(A) was less than one hundred and twenty per cent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years, or

(B) was less than four per cent (4%).

(6) "Rate of insured unemployment," for purposes of paragraphs (4) and (5) of this subsection, means the percentage derived by dividing

(i) the average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent thirteen (13) consecutive-week period, as determined by the commission on the basis of his reports to the U. S. Secretary of Labor, by

(ii) the average monthly employment covered under this act for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such thirteen (13) week period.

(7) "Regular benefits" means benefits payable to an individual under this act or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits.

(8) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(9) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(A) has received, prior to such week, all of the regular benefits that were available to him under this act or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week;

Provided, that, for the purposes of this subparagraph an individual shall be deemed to have received all of the regular benefits that were available to him although (i) as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits.

(B) his benefit year having expired prior to such week, has no, or insufficient, wages on the basis of which he could establish a new benefit year that would include such week; and

(C) (i) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the U. S. Secretary of Labor; and (ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of the

Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

(11) "State law" means the unemployment insurance law of any state, approved by the U. S. Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

(b) Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits.—Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the commission, the provisions of this act which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(c) Eligibility requirements for extended benefits.—An individual shall be eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the commission finds that with respect to such week:

(1) he is an "exhaustee" as defined in subsection (a)(10),

(2) he has satisfied the requirements of this act for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(d) Weekly extended benefit amount.—The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

(e) Total extended benefit amount.—The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(1) fifty per cent (50%) of the total amount of regular benefits which were payable to him under this act in his applicable benefit year;

(2) thirteen (13) times his weekly benefit amount which was payable to him under this act for a week of total unemployment in the applicable benefit year.

(f)(1) Beginning and termination of extended benefit period.—Whenever an extended benefit period is to become effective in this state (or in all states) as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in this state as a result of state and national "off" indicators, the commission shall make an appropriate public announcement.

(2) Computations required by the provisions of subsection (a)(6) shall be made by the commission, in accordance with regulations prescribed by the U. S. Secretary of Labor.

(3) The effective date of subsection (a)(4) of this section shall be January 1, 1972.

(b) An individual disqualified by and pursuant to section 87-106, subsections (a), (b) and (c), shall have his maximum weekly duration

reduced by the number of weeks equal to the number of weeks of disqualification.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971.

Amendments

The 1969 amendment designated the

former section as subdivision "(a)," substituted "subsection (2) or (3)" for "subsection (b) or (c)" at the end of subsection (a) (1); redesignated former subsections (a) (b) and (c) as subsections (1), (2) and (3) of subdivision (a); and added subdivision (b).

The 1971 amendment inserted subsection (a) (4) and made minor changes in style.

87-105. Benefit eligibility conditions. An unemployed individual shall be eligible to receive benefits for any week of total unemployment within his benefit year; only if the commission finds that—

(a) to (d). * * * [Same as parent volume.]

(e) An individual who received benefits during a benefit year must perform services for remuneration after the beginning of that year as a condition for receiving benefits in a second benefit year. The service may be in either covered or noncovered employment, however, the individual must have earned the lesser of three-thirteenths ($3/13$) of his high quarter of his second benefit year or six (6) times his weekly benefit amount of that same year.

(f) Benefits based on service in employment defined in section 87-148 (j)(6) and (7) and section 87-110 (d) shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this act; except that benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education (as defined in section 87-148 (n)) shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971.

Amendments

The 1971 amendment added subdivisions (e) and (f); and made a minor change in phraseology.

Burden of Proof

Unemployment compensation claimant has the burden of showing that he is not

disqualified from the receipt of benefits. *Ollila v. Reeder*, 148 M 134, 417 P 2d 473, 475.

Type of Work

Under statute providing that claimant must be available for work and seeking work, claimant was not eligible where all his applications were either for work in which he had no experience or work which he had no prospect of securing; claimant voluntarily removed himself from only then-existing labor market in area for which he was qualified by refusal to accept farm or ranch work because he despised it. *Noone v. Reeder*, 151 M 248, 441 P 2d 309.

Withdrawal from Labor Market

Claimant, who voluntarily withdrew himself from the active labor market, ren-

dered himself ineligible to receive unemployment compensation benefits. *Ollila v. Reeder*, 148 M 134, 417 P 2d 473, 475.

87-106. Disqualification for benefits. An individual shall be disqualified for benefits—

(a) If he has left work without good cause attributable to the employment for a period of not less than two (2) nor more than five (5) weeks (in addition to and immediately following the waiting period), as determined by the division according to the circumstances in each case; but, he shall not be disqualified if the division finds that:

(1) He left his employment because of personal illness or injury not associated with misconduct, or left his employment upon the advice of a licensed and practicing physician, and after recovering from his illness or injury when recovery is certified by a licensed and practicing physician, he returned to his employer and offered his service and his regular or comparable suitable work was not available, if so found by the division, provided he is otherwise eligible.

(b) If he has been discharged:

(1) For misconduct connected with his work, or affecting his employment, for a period of not less than two (2) nor more than nine (9) weeks (in addition to and immediately following the waiting period), as determined by the division in each case according to the seriousness of the misconduct.

(2) For gross misconduct connected with his work or committed on the employer's premises, as determined by the division, for a period of twelve (12) months.

(c) If he failed, **without good cause**, either to apply for available and suitable work when so directed by the employment office or the division or to accept suitable work offered to him which he is physically able and mentally qualified to perform, or to return to his customary self-employment (if any) when so directed by the division. Such disqualification shall continue for the week in which such failure occurred and for not less than two (2) nor more than five (5) weeks in addition to the waiting week which immediately follow such week as determined by the division according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the division shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2). * * * [Same as parent volume.]

(d) For any week with respect to which the division finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the division that—

(1) and (2). * * * [Same as parent volume.]

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises; provided, further, that if the division, upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

(e) For any week with respect to which he is receiving or has received payment in the form of—

- (1) Wages in lieu of notice or separation or termination allowance;
- (2) Compensation for disability under the Workmen's Compensation Law or the Occupational Disease Law of this or any other state or under a similar law of the United States, provided, however, that when an injured claimant has ceased to draw compensation benefits and shall have returned to the labor market, he shall then be entitled to receive unemployment compensation benefits under this title, if he shall be otherwise qualified. Provided further, that compensation which is received as a payment for a permanent partial disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this title, provided the recipient has returned to the labor market and is otherwise qualified;

(3) Benefits under the Railroad Unemployment Insurance Act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under an unemployment compensation law of another state or of the United States, if such benefits are paid pursuant to section 87-129.

Receipt of any wages, compensation or benefits as set forth in subsection (1), (2), or (3) above, after payment of unemployment benefits, and with respect to the same week for which unemployment benefits were received, will thereupon require such individual to repay such unemployment benefits and the division may collect such unemployment benefits in the same manner as provided for collection of benefits under section 87-145 (d).

(f) During the school year (within the autumn, winter and spring seasons of the year) or the vacation periods within such school year or during any prescribed school term if claimant is a student regularly attending an established educational institution. Notwithstanding any other provisions in this subsection, no otherwise eligible individuals shall be denied benefits for any week because he is in training approved by the division, nor shall such individual be denied benefits with respect to any week in which he is in training approved by the division by reason of the

application of provisions in subsection (c) of this section or the application of provisions in section 87-105 (c).

(g) Where retired and receiving retirement compensation paid in whole or in part from funds furnished by an employing unit, which when prorated on a weekly basis, exceeds the average weekly benefit amount paid during the last fiscal year, such disqualification to be applied as follows: All wages earned by such individual in the employment from which he has been retired shall not be considered or included in determining his wage credits or weekly benefit amount under sections 87-103 and 87-105. This disqualification does not extend to the receipt of benefits under the Federal Social Security Act, as amended.

(h) For any week wherein claimant leaves her most recent employment during pregnancy, and due to such pregnancy, and such disqualifications shall continue through the period of pregnancy unless claimant presents evidence of her physical ability to work at such employment. At any time after the seventh month of pregnancy a claimant, to establish eligibility, must present evidence of physical ability to work at such employment. Further, at any time during the first two (2) months following childbirth, a claimant, to establish eligibility, must present evidence of her physical ability to work at such employment. In any of the cases set forth hereinbefore, such evidence of eligibility must be in the form of certificate of a duly licensed physician that such claimant is physically able to work at her most recent employment, and such evidence must be presented as often as requested by the division.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 369 and once by Ch. 498. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1965 amendment inserted "in excess of one hundred dollars (\$100.00) per calendar month" in the first sentence of subd. (h); substituted "retired individual" for "individual after such retirement" near the beginning of the present third sentence of subd. (h); inserted "and entitled to receive retirement compensation," following "individual is retired" in the present third sentence of subd. (h); and made a minor change in punctuation.

The 1967 amendment inserted in subdivision (e) (3) a second paragraph reading: "Compensation as set forth in subsection (2) above, which is received as a lump-sum payment for a permanent disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving benefits under this act for any week except the one in which the lump-sum payment is made, providing recipient has earned sufficient new wage credits following settlement."

The 1969 amendment, in subdivision (a), substituted "nor" for "or" in the first sentence; in the second paragraph of item (e) (3), substituted "the date of injury" for "settlement"; and in subdivision (h), substituted "87-103 and 87-105" for "87-103 or 87-105."

Chapter 38, Laws of 1971, added the two provisos to subdivision (e) (2); and deleted the paragraph inserted in subdivision (e) (3) by the 1967 amendment.

Chapter 415, Laws of 1971, included the changes made by Ch. 38; deleted the second sentence of subdivision (a); deleted the second paragraph of subdivision (b) (2); added the second sentence to subdivision (f); deleted former subdivisions (g) and (j); redesignated former subdivisions (h) and (i) as subdivisions (g) and (h); deleted "and no benefit * * * in good faith" after "87-105" in the first sentence

of subdivision (g), formerly subdivision (h); deleted the last sentence of subdivision (h), formerly subdivision (i); and made a minor change in punctuation.

Chapter 369, Laws of 1973, substituted references to the division for references to the commission throughout the section; substituted "receiving" for "entitled to" near the beginning of subsection (g); substituted "which when prorated on a weekly basis, exceeds the average weekly benefit amount paid during the last fiscal year" for "in excess of one hundred dollars (\$100.00) per calendar month" in the first sentence of subsection (g); and made a minor change in arrangement.

Chapter 498, Laws of 1973, substituted references to the division for references to the commission; added the phrase following the semicolon in subsection (a); and inserted subsection (a)(1).

Prior Workmen's Compensation Settlement

Claimant was barred from receiving unemployment compensation benefits by reason of prior lump-sum workmen's compensation settlement during the period which lump-sum settlement was intended to cover. *Keller v. Reeder*, 149 M 322, 425 P 2d 830.

87-107. Claims for benefits. (a) Filing. Claims for benefits shall be made in accordance with such regulations as the division may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the division to each employer without cost to him.

(b) Initial determination. A representative designated by the division, and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeals referee which shall make its decisions with respect thereto in accordance with the procedure prescribed in subsection (c) of this section. No determination or redetermination of an initial or additional claim shall be made under this section unless five (5) days notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. The deputy may for good cause reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor.

(c) Finality of determination. A determination or redetermination shall be deemed final unless an interested party entitled to notice thereof applies for reconsideration of the determination or appeals therefrom within five (5) days after delivery of such notification or within seven (7) days after such notification was mailed to his last known address provided, that such period may be extended for good cause.

(d) Appeals referee. To hear and decide disputed claims, the division shall appoint such impartial appeals referee as are necessary for the proper administration of this act, consisting of salaried examiners selected in accordance with section 87-123. No person shall participate on behalf of the division in any case in which he is an interested party. The division may

designate alternates to serve in the absence or disqualification of an appeals referee.

(e) Notice of decision of appeals referee and time for appeal. After a hearing an appeals referee shall make findings and conclusions promptly and on the basis thereof affirm, modify, or reverse the deputy's determination or redetermination. Each interested party shall be furnished promptly a copy of the decision and the supporting findings and conclusions; this decision shall be final unless further review is initiated pursuant to subsection (g) of this section within five (5) days after delivery of such notification or within seven (7) days after such notification was mailed to his last known address, provided, that such period may be extended for good cause.

(f) Prompt payment of claims. Notwithstanding any provision in subsection (b), (c) or (g) of this section, benefits shall be paid promptly in accordance with a determination or redetermination under this section, or the decision of an appeals referee, the board of labor appeals or a reviewing court under subsection (g) of this section upon the issuance of such determination, redetermination or decision (regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review that is provided with respect thereto in subsection (g) of this section, as the case may be, or the pendency of any such application, filing, or petition), unless and until such determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision.

If a deputy's determination or redetermination allowing benefits is affirmed in any amount by an appeals referee, or by the board of labor appeals, or if a decision of an appeals referee allowing benefits is affirmed in any amount by the board of labor appeals, such benefits shall be paid promptly regardless of any further appeal or the disposition of such appeal and no injunction, supersedeas, stay or other writ or process suspending the payment of such benefits shall be issued by the board or any court; but if such decision is finally modified or reversed to deny benefits, no employer's account shall be charged with benefits so paid. Benefits shall not be paid for any weeks of unemployment involved in such modification or reversal that begins after such final decision.

(g) Appeal to board of labor appeals and judicial review. Any interested party dissatisfied with a decision of an appeals referee is entitled to appeal to the board of labor appeals. The division will promptly transmit all records pertinent to the appeal to the board. When a decision is rendered by the board with copies of such decision to all interested parties, including the division, that decision shall become final unless an interested party requests a rehearing or initiates judicial review by filing a petition in district court within thirty (30) days of the date of mailing of the board's decision to his last known address.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973.

Amendments

The 1973 amendment substituted "division" for "commission" throughout the

section; substituted "appeals referee" for "appeal tribunal" in the latter part of the first sentence in subsection (b) and in three places in subsection (d); deleted from the end of the first sentence in subsection (b) clauses providing for referral to and decision by the commission in work-stoppage cases; inserted a new second sentence in subsection (b); redesignated the former fourth sentence of subsection (b) as subsection (c); deleted from the end of subsection (b) two sentences providing for suspension of benefits pending appeal from an adverse decision; deleted from the end of the sentence redesignated as subsection (c)

a clause providing for payment or denial of benefits in accordance with the decision; added to the end of subsection (c) the clause providing for extension of time for appeal; deleted former subsection (c), relating to decisions by appeal tribunals; deleted from the first sentence of subsection (d) clauses providing for three-member tribunals; deleted from subsection (d) two final sentences relating to absence of members of an appeal tribunal; deleted former subsection (e), relating to review by the commission; added new subsections (e), (f) and (g); and made minor changes in phraseology.

87-108. Procedure and appeals.

Findings of Commission

Finding of unemployment compensation commission that claimant was not available for and seeking work as required by section 87-105 was proper where the evidence showed that claimant quit his job to protect his social security retirement benefits; he knew that his employer would not rehire him if he failed to report off from work; he went to Minnesota to take a rest; and he failed to seek full-time em-

ployment. *Ollila v. Reeder*, 148 M 134, 417 P 2d 473, 475.

Scope of Judicial Review

Under that portion of statute relating to court review, findings of fact by commission, if supported by substantial evidence, are conclusive and confine scope of judicial review to questions of law. *Noone v. Reeder*, 151 M 248, 441 P 2d 309.

87-109. Contributions. (a) **Payment.** (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages, as defined in section 87-149 (c), paid for employment (as defined in this act) occurring during such calendar year. Such contributions shall become due and be paid by each employer to the division for the fund in accordance with such regulations as the division may prescribe and shall not be deducted, in whole or in part, from the wages of individuals in his employ.

(2). * * * [Same as parent volume.]

(b) **Rate of contribution.**

(1) Each employer shall pay contributions at the rate of three and one-tenth per centum (3.1%) of wages, as defined in section 87-149 (c) paid by him with respect to such employment, except as provided in subsection (c) of this section.

Nonprofit organizations defined in section 501 (c) (3) of the federal internal revenue code and which are exempt from tax under section 501 (a) of such code may elect to make payments in lieu of contributions; the state and its political subdivisions specifically covered by this act and those electing coverage shall make payments in lieu of contributions.

A group of nonprofit organizations may elect with the approval of the division to act as a group in fulfilling the requirements of this subsection or of this act.

(2) Employers required or eligible to elect to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus one-half ($\frac{1}{2}$) of the amount of extended

benefits paid to individuals based on wages paid by such employing unit. If benefits paid an individual are based on wages paid by both such employer and one (1) or more other employers, the amount payable by such employer to the fund shall bear the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all his base period employers. If the base period wages of an individual include wages from more than one (1) such employer, the amount to be paid into the fund with respect to the benefits paid to such individual shall be prorated among the liable employers in proportion to the wages paid to such individual by each such employer during the base period. The amount of payment required from such employers shall be ascertained by the division quarterly and shall become due and payable by such employer quarterly as directed in this act. Penalty and interest for delinquency shall be assessed such employers as specified in section 87-135.

(3) Any nonprofit organizations as defined in subsection (b) (1) of this section electing to become liable for payments in lieu of contributions must file with the division a written notice of its election not later than thirty (30) days immediately following the date of the determination of subjectivity to this act. This election shall be for a period of not less than two (2) years.

(A) Any nonprofit organization may terminate its election to make payments in lieu of contributions after two (2) calendar years from the effective date of such election by filing a written notice with the division not later than thirty (30) days prior to the beginning of the taxable year for which such termination is effective.

(B) Any nonprofit organization defined in subsection (b) (1) of this section which has been paying contributions for at least two (2) taxable years may change to payments in lieu of contributions by filing with the division a written notice to that effect within thirty (30) days before the beginning of the taxable year for which the change is effective.

(C) If the nonprofit organization is delinquent in making payments in lieu of contributions, the division may terminate the election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the next taxable year.

(4) Payments in lieu of contributions by the state and its political subdivisions shall be an amount equivalent to the amount of benefits paid to individuals based on wages paid by the state and its political subdivisions. The method of determining benefits attributable shall be the same as that set forth in subsection (b)(2) of this section. The amount of payments shall be paid in such manner as the division may prescribe.

(c) Experience rating.

The division shall for each calendar year, classify employers in accordance with their actual contributions and unemployment experience and shall determine for each employer the rate of contributions which shall

apply to him throughout the calendar year in order to reflect said experience and classification. The division shall apply such form of classification or experience rating system which is best calculated to rate individually and most equitably the employment for each employer and to encourage the stabilization of employment.

In making such classification, the division shall take account, each to an equal extent, of the following factors relating to the unemployment hazard shown by each employer on the basis of (1) average annual net percentage declines in total payrolls for the last three (3) years prior to computation date; (2) number of years the employer has paid contributions; and (3) chargebacks to the individual employer account upon the last employer basis. The computation date is hereby fixed as of the close of business on June 30 of the preceding calendar year.

The rates for the first calendar quarter of calendar year 1972 and thereafter, except as hereinafter provided, shall be so fixed that they would, if applied to all employers (except those employers making payments in lieu of contributions) and their total taxable annual payrolls for the preceding calendar year, have yielded total paid contributions equaling approximately one and five-tenths per centum (1.5%) of the total of all such payrolls.

The division shall determine the contribution rate applicable to each employer for any calendar year subject to the following limitations:

(1) Each employer's rate shall be three and one-tenth per centum (3.1%) unless and until there have been three (3) years prior to the computation date throughout which the employer has paid contributions at the maximum tax rate set by law for each of such years and has reported and paid contributions during each of the three (3) calendar years immediately preceding the computation date and with respect to such three (3) calendar years has filed all contribution reports prescribed by the division and paid all contributions due with respect to the three (3) calendar years before March 31 of the rate year. Upon payment of past-due contributions the division shall, for the current year, compute a rate for the next succeeding quarter following the payment.

(2) The classified contribution rates for the calendar year 1969, and thereafter, except as hereinafter provided, shall be: five-tenths of one per centum (.5%), seven-tenths of one per centum (.7%), nine-tenths of one per centum (.9%), one and one-tenth per centum (1.1%), one and three-tenths per centum (1.3%), one and five-tenths per centum (1.5%), one and seven-tenths per centum (1.7%), one and nine-tenths per centum (1.9%), two and one-tenth per centum (2.1%), two and three-tenths per centum (2.3%), two and five-tenths per centum (2.5%), two and seven-tenths per centum (2.7%), two and nine-tenths per centum (2.9%), and three and one-tenth per centum (3.1%).

(3) No employer shall be assigned a classified contribution rate higher than the second classified rate above the rate which was assigned to him for the last preceding calendar year except for the year 1961 and further as hereinafter provided. This subsection shall not apply when the employer's chargeback ratio exceeds one hundred per cent (100%).

(4) An employer whose benefit payments (charged as most recent employer) in the last three (3) years preceding the computation date exceeded the amount of his contributions for those years, may have the option of making a voluntary contribution to the unemployment compensation fund to cancel the amount by which the benefit payments charged to him under section 87-109 (c) during the last three (3) completed fiscal years exceed his contributions for the same three (3) years. Such voluntary contribution shall be applied first to cancel the amount by which benefits exceed contributions in the earliest of the three (3) years preceding the computation date, any remaining to cancel the excess in the second earliest year preceding the computation date, and any further remaining to cancel the excess in the most recent year preceding the computation date. Whenever the benefit payments charged to an eligible employer in the last three (3) fiscal years exceed his contributions for the same period, the division shall notify him of the amount of such excess and the rate which would be applicable to him for the ensuing calendar year, if he exercises the option. Such employer must exercise the option of making the voluntary contribution allowed by this section within thirty (30) days after receipt of such notice.

(5) Rates as fixed by the division shall stand and be in effect unless and until the cash reserves in the unemployment compensation trust fund at any time in the future fall below, and remain below, eighteen million dollars (\$18,000,000) continuously for a period of one (1) year, then employer rates effective at the beginning of the next succeeding calendar quarter shall be so fixed that they would, if applied to all employers and their total taxable annual payrolls for the preceding calendar year, have yielded total paid contributions equaling approximately two per centum (2%) of the total of all such payrolls, and shall continue at the two per centum (2%) average rate until cash reserves in the unemployment compensation trust fund exceed twenty-six million dollars (\$26,000,000) at which time all employer rates shall again be so fixed to bring an average return of one and five-tenths per centum (1.5%) as in this section hereinabove provided; if reserves remain below eighteen million dollars (\$18,000,000) continuously for a period of two (2) years, then the contribution rate of all employers subject to this act shall return to a uniform rate of three and one-tenth per centum (3.1%) effective at the beginning of the next succeeding calendar quarter, and shall continue at the three and one-tenth per centum (3.1%) rate until cash reserves in the unemployment compensation trust fund exceed twenty-six million dollars (\$26,000,000) at which time all employer rates shall again be so fixed to bring an average return of one and five-tenths per centum (1.5%) as in this section hereinabove provided.

(6) The division shall by regulation adopt such procedures as may be necessary for the substitution, merging or acquisition of an employer account by an employing unit, and the transfer of such employer account, rights, contributions, benefit experience and ratings to the successor employing unit or units.

(7) The division shall by regulation provide for the proper notification of employers of the classification and rate of contribution applicable to

their accounts. Such notification shall be final for all purposes unless and until such employer files a written request with the division for a redetermination or hearing thereon within thirty (30) days after receipt of such notice.

(8) "Annual total payroll" means the total of the four (4) quarters of total payrolls of an employer preceding the computation date as fixed herein.

(9) No employer's account shall be charged with benefits paid to any claimant in determining the contribution rate of such employer;

(A) If the claimant has been disqualified under section 87-106 (a), (b), (g), or (h), as a result of separation from such employer;

(B) If the claimant left work for nondisqualifying reasons as provided in section 87-106 (a);

(C) Unless the employer has had notice of the claim for the benefits and has been given opportunity for hearing as an interested party in the manner provided in sections 87-107 and 87-108. Written notice of any hearing shall be mailed to employer not less than ten (10) days prior to the date set.

(d) The provisions of this act requiring the payment of contributions by employers subject to this act shall apply only to wages paid up to and including three thousand dollars (\$3,000) by an employer to an employee with respect to employment during any calendar year preceding the year 1972.

Payment of contributions shall apply only to wages paid up to and including four thousand two hundred dollars (\$4,200) by an employer to an employee with respect to employment during the calendar year 1972 and thereafter.

(e) Contribution appeals.

Any person aggrieved by any decision, determination, or redetermination of the division involving contribution liability, contribution rate, application for refund or the charging of benefit payments to employers making payment in lieu of contributions is entitled to a review by the division or its authorized representative, hereinafter referred to as a deputy. The decision of the deputy shall be deemed to be the decision of the division. The division or the deputy conducting the review may refer the matter to an appeal referee, may decide the application for review on the basis of such facts and information as may be obtained or may hear argument to secure further facts. After such review, notice of the decision shall be given to the employing unit. Such decision made pursuant to such review shall be deemed to be the final decision of the division unless the employing unit or any other such interested party, within five (5) calendar days after delivery of such notification or within seven (7) calendar days after such notification was mailed to his last known address, files an appeal from this decision. Such appeal will be referred to an appeal referee who shall make his decisions with respect thereto in accordance with the procedure prescribed in section 87-107 (c).

History: En. Sec. 7, Ch. 137, L. 1937; Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, 1947; amd. Sec. 5, Ch. 191, L. 1953; amd.

Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973.

Amendments

The 1969 amendment made numerous changes in phraseology; rewrote subdivision (b) (1) which formerly provided for employer contributions of 1.8% for 1937 employment and 2.7% for subsequent employment; in subsection (c), deleted an apparently superfluous third paragraph which is shown in brackets in the parent volume; raised the rates stated in the fourth paragraph, now the third paragraph, from 1.5% to 1.6%; in subdivision (c) (1), substituted 3.1% rate for 2.7% rate, "date" for "rate" and "maximum tax rate set by law for each of such years" for "rate of two and seven-tenths (2.7) per centum"; in subdivision (c) (2), substituted 1969 rates for separate rates for 1947 and thereafter and 1953 and thereafter; in subdivision (c) (4), substituted 3.1% rate for 2.7% rate; in subdivision (c) (5), substituted reference to 1.6% and 3.1% rate for references to 1.5% and 2.7% rate; and inserted subdivision (c) (9).

The 1971 amendment added the second paragraph to subdivision (b) (1); added subdivisions (2), (3) and (4) to subsection (b); substituted "total payrolls" for "taxable payrolls" in clause (1) in the second paragraph of subsection (c), and also in two places in subdivision (c) (8); substituted "first calendar quarter of calendar year 1972" for "second calendar quarter of calendar year 1969" in the third paragraph of subsection (c); inserted "(except those employers making payments in lieu of contributions)" in the third paragraph of subsection (c); reduced the rate specified at the end of the third paragraph of subsection (c) from 1.6% to 1.5%; reduced the time required by subdivision (c) (1) from five to three years; added "and has reported and paid contributions during each of the three (3) calendar years immediately preceding the computation date and with respect to such three (3) calendar years has filed all contribution reports prescribed by the commission and paid all contributions due with respect to the three (3) calendar years before March 31 of the rate year" to the end of the first sentence of subdivision (c) (1); added the second sentence to subdivision (c) (1); added the second sentence to subdivision (c) (3); deleted "No employer's rate shall be fixed below three and one-tenth (3.1) per centum whose benefit payments charged as most recent employer have, in the last three (3) years preceding the computation date, exceeded the amount of his contri-

butions for those years" from the beginning of subdivision (c) (4); inserted "An employer whose benefit payments (charged as most recent employer) in the last three (3) years preceding the computation date exceeded the amount of his contributions for those years" at the beginning of subdivision (c) (4); deleted from the end of subdivision (c) (4) a clause reading "otherwise his rate for the ensuing calendar year shall be fixed at three and one-tenth (3.1) per centum"; reduced the average return rate specified in two places in subdivision (c) (5) from 1.6% to 1.5%; deleted from the end of subdivision (c) (7) a sentence reading "The provisions of section 87-107 applicable to appeals under claims procedure shall apply with like purpose and effect, and be applicable to hearings and request for redeterminations of classifications and rates of contribution filed by employers hereunder"; inserted subdivisions (A) and (B) in subdivision (c) (9); designated the latter part of former subdivision (c) (9) as subdivision (c) (9) (C); deleted "Wages in excess of three thousand dollars (\$3,000.00)" at the beginning of subsection (d); added "preceding the year 1972" at the end of the first paragraph of subsection (d); added the second paragraph of subsection (d) and all of subsection (e); and made minor changes in phraseology and punctuation.

The 1973 amendment substituted "division" for "commission" throughout the section; substituted "501(c)(3) of the federal internal revenue code" for "87-148(j)(7)" and inserted "and which are exempt from tax under § 501(a) of such code" in the second paragraph of subdivision (b)(1); added the third paragraph to subdivision (b)(1); substituted "subsection (b)(1) of this section" for "section 87-148(j)(7)" at the beginning of subdivision (b)(3); deleted "for a period of not less than one year" from subdivision (b)(3); substituted the second sentence and paragraphs (A), (B) and (C) of subdivision (b)(3) for two sentences making the election nonterminable by the organization until after the next year but permitting the commission to terminate the election for delinquencies in payment; substituted the first two sentences in subsection (e) for a sentence providing for review of determinations by the commission or a deputy; and made minor changes in style and phraseology.

Separability Clause

Section 5 of Ch. 4, Ex. Laws 1969 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, im-

pair, or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

Repealing Clause

Section 6 of Ch. 4, Ex. Laws 1969 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 7 of Ch. 4, Ex. Laws 1969 read "Sections 1, 2 and 3 of this act shall be in

full force and effect on and after April 6, 1969, and sections 1, 2 and 3 shall apply to all benefit years beginning on and after April 6, 1969, and the insured status of all claimants who have a benefit year current on or after April 6, 1969, shall be redetermined and benefits shall be paid in accordance with this provision, provided that no insured worker shall have his benefits reduced or denied by redetermination resulting from the application of this provision; section 4 of this act shall be in full force and effect on and after April 1, 1969."

87-110. Period, election and termination of employer's coverage.

(a) Any employing unit which is or becomes an employer subject to this act within any calendar year, shall be subject to this act during the whole of such calendar year, except that this subsection shall not apply to an employing unit electing coverage as provided for in subsections (c) and (d) of this section.

(b) Except as otherwise provided in subsection (c) and (d) of this section an employing unit shall cease to be an employer subject to this act only as of the first day of January, of any calendar year, only if it files with the division prior to the last day of February, of such year, a written application for termination of coverage, and the division finds that the total wages payable for employment by said employer in the preceding calendar year did not exceed five hundred dollars (\$500). For the purpose of this subsection, the two (2) or more employing units mentioned in paragraph (2) or (3) of section 87-148 (i) shall be treated as a single employing unit.

(c) An employing unit not otherwise subject to this act, or any employing unit for which services are performed that do not constitute employment as defined in this act, may file with the division, a written election that all such services performed by individuals in its employ in one (1) or more distinct establishments or places of business shall be deemed to constitute employment for all purposes of this act for not less than two (2) calendar years. Upon the written approval of such election by the division, such services shall be deemed to constitute employment subject to this act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1, of any calendar year subsequent to such two (2) calendar years only if at least thirty (30) days prior to such first day of January such employing unit has filed with the division a written notice to that effect.

(d) Any political subdivision of this state may elect to cover under this act service performed by employees in all the hospitals and institutions of higher education as defined in section 87-148 (n) and (o), operated by such political subdivision. The election may exclude any services described in section 87-148 (j)(7)(A). Election is to be made by filing with the division a written notice of such election. The effective date of the written election shall be any date after December 31, 1971, designated by the employing unit, provided that the date shall not be prior to January 1 of the calendar year in which the written election has been filed. Any

political subdivision electing coverage under this subsection shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided in section 87-109 (b)(4). An election under this section may be terminated, by filing with the division written notice not later than thirty (30) days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed after that date.

History: En. Sec. 8, Ch. 137, L. 1937; amd. Sec. 4, Ch. 137, L. 1939; amd. Sec. 5, Ch. 164, L. 1941; amd. Sec. 1, Ch. 37, L. 1969; amd. Sec. 1, Ch. 103, L. 1971; amd. Sec. 1, Ch. 181, L. 1973.

Amendments

The 1969 amendment deleted "there were no twenty (20) different days, each day being in a different week within the preceding calendar year within which such employing unit employed one (1) or more individuals in an employment subject to this act, or" before "the total wages payable" in the first sentence of subsection (b).

The 1971 amendment deleted the former first paragraph of subsection (c), for text of which see parent volume; inserted "An employing unit not otherwise subject to this act, or" at the beginning of

the former second paragraph, now the only paragraph, of subsection (c); added subsection (d); and made minor changes in phraseology.

The 1973 amendment added the clause excepting elective coverage under subsections (c) and (d) to the end of subsection (a); inserted "and (d)" near the beginning of subsection (b); substituted "division" for "commission" throughout the section; inserted "written" before "notice" in the third sentence of subsection (d); deleted "at least thirty (30) days prior to the effective date of such election" at the end of the third sentence in subsection (d); inserted the fourth sentence of subsection (d); deleted the last sentence of subsection (d), which stated the effective date of the section; and made a minor change in style.

87-111. Unemployment compensation account—establishment and control. There is hereby established separate and apart from all public moneys or funds of this state, an account in the agency fund known as the unemployment compensation account, which shall be administered by the commission exclusively for the purposes of this act. Any reference to the unemployment compensation fund in this code shall be taken to mean the unemployment compensation account in the agency fund. This account shall consist of (1) all contributions collected under this act, inclusive of voluntary contributions as provided in section 87-109 (c)(4), and payments made in lieu of contributions as provided in section 87-109 (b)(2) and (4); (2) interest earned upon any moneys in the account; (3) any property or securities acquired through the use of moneys belonging to the account; (4) all earnings of such property or securities; and (5) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended. All moneys in the account shall be mingled and undivided.

History: En. Subd. (a), Sec. 9, Ch. 137, L. 1937; amd. Sec. 2, Ch. 190, L. 1945; amd. Sec. 4, Ch. 171, L. 1957; amd. Sec. 206, Ch. 147, L. 1963; amd. Sec. 1, Ch. 88, L. 1971.

Amendments

The 1971 amendments inserted "and payments made in lieu of contributions as provided in section 87-109 (b) (2) and (4)" at the end of clause (1) in the third sentence.

87-117. Employment security commission — organization. There is hereby created a commission to be known as the employment security commission of Montana. The commission shall consist of three (3) mem-

bers who shall be appointed by the governor by and with the advice and consent of the senate. Two (2) of the members of the commission shall be from different political parties and shall serve for terms of four (4) years, provided, however, that one (1) of those first appointed after this act takes effect shall serve for a term of two (2) years. They shall serve on a per diem basis and shall be paid at the rate of twenty dollars (\$20) per day of service plus actual and necessary expenses, provided, however, that the total per diem compensation in any one (1) year for each of said two (2) members shall not exceed the sum of one thousand dollars (\$1,000). The third member of the commission, who shall be designated as a chairman at the time of his appointment, shall be paid a full-time salary in an amount to be fixed by the governor and shall be the executive director. During his term of membership on the commission, no member shall serve as an officer or committee member of any political party organization. The governor may, at any time, after notice and hearing, remove any commissioner for neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

History: En. Subd. (a), Sec. 10, Ch. 137, L. 1937; amd. Sec. 1, Ch. 102, L. 1953; amd. Sec. 1, Ch. 132, L. 1969; amd. Sec. 1, Ch. 65, L. 1971.

Amendments

The 1969 amendment substituted "employment security commission" for "unemployment compensation commission" in the first sentence.

The 1971 amendment increased the per diem specified by the fourth sentence from \$10 to \$20 per day, and increased the maximum annual per diem from \$500 to \$1000.

Cross-References

Commission abolished and functions transferred, sec. 82A-1007.

87-118. Divisions. The commission shall establish two co-ordinate divisions: The Montana state employment service division created pursuant to section 87-132, and the unemployment insurance division. Each division shall be responsible to the executive director for the discharge of its distinctive function. Each division shall be a separate administrative unit with respect to personnel, budget, and duties except in so far as the commission may find that such separation is impracticable.

History: En. Subd. (b), Sec. 10, Ch. 137, L. 1937; amd. Sec. 2, Ch. 132, L. 1969.

employment compensation division" in the first sentence.

Cross-References

Bureaus within division of employment security, sec. 82A-1006 (2).

Amendments

The 1969 amendment substituted "unemployment insurance division" for "un-

87-120. Administration—duties and powers of commission. It shall be the duty of the commission to administer this act; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this act, which the commission shall prescribe. The commission shall determine its own organization and methods of procedure in accordance with the provisions of this act, and shall have an official seal

which shall be judicially noticed. The commission shall report as provided in section 2 [82-4002] of this act. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

History: En. Subd. (a), Sec. 11, Ch. 137, L. 1937; amd. Sec. 6, Ch. 156, L. 1961; amd. Sec. 40, Ch. 93, L. 1969.

in the fourth sentence for former provision requiring annual reports.

Cross-References

Amendments

The 1969 amendment substituted the reporting requirements of section 82-4002

Quasi-judicial functions of commission transferred to board of labor appeals, sec. 82A-1009.

87-124. Records and reports. Each employing unit shall keep true and accurate work records, containing such information as the commission may prescribe. Those records shall be open to inspection and shall be subject to being copied by the commission or its authorized representative at any reasonable time and as often as may be necessary. The commission and the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which the commission considers necessary to the effective administration of this act. Information thus obtained or obtained from any individual under this act shall, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and shall not be published or be open to public inspection except to public employees in the performance of their public duties in any manner revealing the individual's or employing unit's identity, but any claimant or his legal representative at a hearing before the commission or appeal tribunal shall be supplied with information from the records to the extent necessary for the proper presentation of his claim. Any employee or member of the commission who violates any provision of this section shall be fined not less than twenty dollars (\$20) nor more than two hundred dollars (\$200), or imprisoned for not longer than ninety (90) days, or both.

History: En. Subd. (e), Sec. 11, Ch. 137, L. 1937; amd. Sec. 1, Ch. 144, L. 1974.

individual claimant" after the first "except" in the fourth sentence and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment inserted "to the

87-129. Reciprocal benefit arrangements. The commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government, whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in this act, or under similar

provisions of the unemployment compensation laws of such other states, shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights to benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commission finds will be fair and reasonable as to all affected interests, and will not result in any substantial loss to the fund.

The commission shall participate in any arrangements, approved by the U. S. secretary of labor, with the appropriate agencies of the other states or of the federal government whereby wages or services, upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal government, shall be deemed to be wages for employment by employers for benefit purposes;

Provided that in any instance involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws that the base period of a single state law will be used; and

Provided that such combining of wages will not involve the duplicate use of such wage credits; and

Provided that such other state agency or agency of the federal government has agreed to reimburse the unemployment compensation fund for such portion of benefits paid under this act upon the basis of such wages or services as the commission finds will be fair and reasonable as to all affected interests; and whereby the commission will reimburse other state or federal agencies charged with the administration of unemployment compensation laws, with such reasonable portion of benefits, paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers, as the commission finds will be fair and reasonable to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of this act. The commission is hereby authorized to make to other state or federal agencies, reimbursements from or to the unemployment compensation fund, in accordance with arrangements made pursuant to this section.

History: En. Subd. (j), Sec. 11, Ch. 137, L. 1937; amd. Sec. 3, Ch. 190, L. 1945; amd. Sec. 1, Ch. 91, L. 1971.

Amendments

The 1971 amendment substituted "shall participate in any arrangements, approved by the U. S. secretary of labor" for "is

also authorized to enter into arrangements" at the beginning of the second paragraph; inserted the first and second provisos; deleted "and receive from such other state or federal agencies" before "reimbursements" in the final sentence of the section; and made minor changes in phraseology and style.

87-132. State employment service.

Cross-References

Bureau of Montana state employment

service within division of employment security, sec. 82A-1006 (2).

87-136. Collection—reciprocity with other states in effecting collection of unpaid unemployment compensation taxes. (a) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the commission, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this act and cases arising under the workmen's compensation law of this state. Action for the collection of contributions due shall be brought within five (5) years after the due date of such contributions, otherwise to be barred as provided in section 93-2604.

(b) The courts of this state shall recognize and enforce liabilities for unemployment contributions imposed by other states which extend a like comity to this state. The commission is hereby empowered to sue in the courts of any other jurisdiction which extends such comity, to collect unemployment contributions and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state, to collect for such contributions and interest and penalties, if any, due such state; in any such case the chairman of the commission of this state may through his attorney or attorneys institute and conduct such suit for such other state. Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties and interest due under this act. A certificate by the secretary of any such state under the great seal of such state attesting the authority of such official or officials to collect unemployment compensation contributions, penalties and interest shall be conclusive evidence of such authority.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969.

Amendments

The 1969 amendment designated the former section as subsection (a) and added subsection (b).

87-142. Limitation of fees.

Attorney's Fees

Attorney who failed to notify unemployment compensation commission that he represented three clients on a contingent fee basis, which the court determined could be considered a debt for "necessaries" under section 87-143, and not hav-

ing requested notification from the commission so that he could collect his fee from the three men, was unable to proceed against either the commission or the state. *McAlear v. Unemployment Compensation Commission*, 145 M 458, 405 P 2d 219.

87-143. No assignment of benefits—exemptions.

Attorney's Fees

Where services rendered by attorney restored three men to the rolls of the unemployment compensation commission, set aside a one-year purge of their names from those rolls, and cleared their names

of fraud, court concluded that under such facts attorney's fees should be considered a debt incurred for "necessaries." *McAlear v. Unemployment Compensation Commission*, 145 M 458, 405 P 2d 219.

87-145. Penalties—falsity or willful nondisclosure—violations by employer or agent—violation of act or regulations—wrongfully collecting benefits. (a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act, or under an employment security law of any other state, or territory or the federal government either for himself or for any other person, shall:

(1). * * * [Same as parent volume.]

(2) Be disqualified for benefits thereafter until:

(A) He has repaid to the commission a sum equal to the amount so received by him; provided, however, will not be required to repay any amount so obtained more than five (5) years prior to the date of the commission's determination that the claimant made such false statements, willful nondisclosure or misrepresentation, as provided in this paragraph, and

(B) A period of not less than ten (10) nor more than fifty-two (52) weeks have elapsed since the date of such determination by the commission, the length of time of the disqualification as herein described to be determined by the commission in accordance with the severity of each case.

(b) to (d). * * * [Same as parent volume.]

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969.

Amendments

The 1969 amendment in item (a) (2)

(A), deleted "he" before "will not be required," and in item (a) (2) (B), substituted "A period of not less than ten (10) nor more than fifty-two (52) weeks" for "Twelve (12) months" at the beginning, and added "the length of the time * * * the severity of each case."

87-148. Definitions. As used in this act, unless the context clearly requires otherwise:

(a) "Annual payroll" means the total amount of wages paid by an employer (regardless of the time of payment) for employment during a calendar year.

(b). * * * [Same as parent volume.]

(c) "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year provided, however, that in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state.

(d) "Benefit year" with respect to any individual means, the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim, and thereafter the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files his next valid claim after the termination of his last preceding benefit year, provided that if such filing shall result in an overlapping of benefit years the new benefit year

shall begin upon the first Sunday following the expiration of his last preceding benefit year provided, however, that in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state.

(e). * * * [Same as parent volume.]

(f) "Division" means the employment security division of the department of labor and industry provided for in Title 82A, chapter 10, R. C. M. 1947.

(g). * * * [Same as parent volume.]

(h) "Employing unit" means any individual or type of organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one (1) or more individuals performing services for it within this state; and all individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(i) "Employer" means:

(1) Any employing unit whose total annual payroll within either the current or preceding calendar year, exceeds the sum of five hundred dollars (\$500);

(2) and (3). * * * [Same as parent volume.]

(4) Any employing unit not an employer by reason of any other paragraph of this subsection for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund, or an employing unit, which, as a condition for approval of this act for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an "employer" under this act.

(5) Any employing unit which, having become an employer under paragraph (1), (2), or (3), or (4), has not, under section 87-110, ceased to be an employer subject to this act; or

(6) For the effective period of its election pursuant to section 87-110 (c) and (d) any other employing unit which has elected to become fully subject to this act.

(j) (1) "Employment" subject to other provisions of this subsection means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2). * * * [Same as parent volume.]

(3) Service not covered under paragraph (2) of this subsection, and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act if the individual performing such services is a resident of this state and the division approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(4). * * * [Same as parent volume.]

(5) Services performed by an individual for wages shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the division that:

(A) to (C). * * * [Same as parent volume.]

(6) The term "employment" shall include service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one (1) or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. Effective after December 31, 1974, the term "employment" shall include service performed by all individuals in the employ of this state or of any of its instrumentalities (or in the employ of this state and one (1) or more other states or their instrumentalities).

(7) The term "employment" shall include service performed after December 31, 1971, by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(A) For the purposes of paragraph (7) of this subsection the term "employment" does not apply to service performed:

(1) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(3) In the employ of a school which is not an institution of higher education; or

(4) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental

capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or

(5) Services performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or any agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(6) Services performed for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution.

(8) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada or the Virgin Islands), after December 31, 1971, in the employ of an American employer (other than service which is deemed "employment" under the provisions of subparagraphs (2) or (4) of this subsection or the parallel provisions of another state's law), if:

(A) The employer's principal place of business in the United States is located in this state; or

(B) The employer has no place of business in the United States, but

(1) The employer is an individual who is a resident of this state; or

(2) The employer is a corporation which is organized under the laws of this state; or

(3) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(C) None of the criteria of divisions (A) and (B) of this subparagraph is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(D) An "American employer," for purposes of this paragraph, means a person who is:

(1) An individual who is a resident of the United States; or

(2) A partnership if two-thirds ($\frac{2}{3}$) or more of the partners are residents of the United States; or

(3) A trust, if all of the trustees are residents of the United States; or

(4) A corporation organized under the laws of the United States or of any state.

(9) The term "employment" shall not include:

(A) Agricultural labor; the term "agricultural labor" includes all services performed prior to January 1, 1972, which was agricultural labor as defined in this subparagraph prior to such date, and remunerated services performed after December 31, 1971:

(1) On a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feed-

ing, caring for, training, and management of livestock, bees, poultry and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of any commodity commonly known as agricultural commodities, or in connection with the hatching of poultry, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In the employ of the operator of a farm or a group of operators of farms (or a co-operative organization of which such operators are members) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator or operators produced more than one-half ($\frac{1}{2}$) of the commodity with respect to which such service is performed.

(5) The provisions of paragraphs (1), (2), (3), and (4) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

(6) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

(B) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority;

(C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his father or mother;

(E) Service performed in the employ of this state, except as provided in subsection (j) (6) of this section, or of any political subdivision thereof, which has not elected coverage pursuant to section 87-110(d);

(F) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this section and shall be subject to this act the same as state banks;

(G) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress; provided, that the division is hereby authorized and directed to enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner in section 87-121 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under such act of Congress, or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under this act;

(H) Services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of eighteen (18) years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution.

(I) Services performed by real estate, securities and insurance salesmen paid solely by commissions and without guarantee of minimum earnings.

(J) Service performed, in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university, or by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance.

(K) Service performed by an individual under the age of twenty-two (22) who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

(L) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital.

(k) "Employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, or such other free public employment offices operated and maintained by the United States government or its instrumentalities, as the division may approve.

(l) "Fund" means the unemployment compensation fund established by this act, to which all contributions and payments in lieu of con-

tributions are required and from which all benefits provided under this act shall be paid.

(m) "State," includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(n) "Institution of higher education" for the purposes of this section, means an education institution which:

(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized in this state to provide a program of education beyond high school;

(3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

(5) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this section.

(o) "Hospital" means an institution which has been licensed, certified or approved by the state of Montana as a hospital.

(p) "Board" means the board of labor appeals, provided for in Title 82A, chapter 10.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 159 and once by Ch. 404. Ch. 404, the later enactment, incorporated all the changes made by the earlier chapter and made additional changes. The compiler has therefore used the text of Ch. 404 above.

Amendments

The 1965 amendment inserted "securities" in subdivision (j) (6) (J), now subdivision (j) (9) (J).

The 1969 amendment deleted "which for some * * * such day" after "employing unit" in subdivision (i) (1).

The 1971 amendment deleted subdivision (a) (2) defining "average annual payroll"; substituted "employment security" for "unemployment compensation" in subdivision (f); inserted "the state government, any of its political subdivisions or instrumentalities" in the first sentence of subdivision (h); inserted subdivision (i) (4) and the reference to it in subdivision (i) (5); redesignated former subdivisions (i) (4) and (i) (5) as subdivisions (i) (5) and (i) (6); inserted "and (d)" in subdivision (i) (6); inserted "by an individual or by an officer of a corporation" in subdivision (j) (1); inserted subdivisions (j) (6), (7) and (8); redesignated former subdivision (j) (6) as subdivision (j) (9); added "prior to * * * December 31, 1971" to the end of the preliminary paragraph of subdivision (j) (9) (A); deleted "maple syrup or maple sugar or" after "harvesting of" in subdivision (j) (9) (A) (3); deleted "or in connection with the raising or harvesting of mushrooms" after "agricultural commodities" in subdivision (j) (9) (A) (3); inserted "the employ * * * are members" in" in subdivision (j) (9) (A) (4); inserted "in its unmanufactured state" in

subdivision (j) (9) (A) (4); substituted "operator produced * * * is performed" for "service is * * * for market" in subdivision (j) (9) (A) (4); revised the former second sentence of subdivision (j) (9) (A) (4) and designated it as subdivision (j) (9) (A) (5); redesignated former subdivision (j) (9) (A) (5) as subdivision (j) (9) (A) (6); deleted former subdivision (j) (9) (E); redesignated former subdivisions (j) (9) (F) and (G) as subdivisions (j) (9) (E) and (F); inserted the present subdivision (j) (9) (G); added subdivisions (j) (9) (K), (L) and (M); deleted "Hawaii" and "Guam" in subdivision (m); added subdivisions (n) and (o); and made minor changes in phraseology and style.

Chapter 159, Laws of 1973, added the provisos to subdivisions (c) and (d); substituted subdivision (f) for a subdivision defining "commission" as the employment security commission; substituted "division" for "commission" throughout the section; substituted "contributions paid" for "contributions required to be paid" in subdivision (i) (4); deleted "which is excluded from the term 'employment' as defined in the Federal Unemployment Tax Act solely by reason of section 3306 (c) (8) of that Act" from the end of the preliminary paragraph of subdivision (j) (7); substituted the reference to subparagraph (4) in the preliminary paragraph of subdivision (j) (8) for a reference to subparagraph (3); inserted "or operators" near the end of subdivision (j) (9) (A) (4); added "which has not elected coverage pursuant to section 87-110 (d)" at the end of subdivision (j) (9) (E); deleted a subdivision (j) (9) (G) exempting service in the employ of certain community action agencies; redesignated the succeeding subdivisions of subdivision (j) (9); inserted "and payments in lieu of contributions" in subdivision (1); added subdivision (p); and made minor changes in phraseology and punctuation.

Chapter 404, Laws of 1973, made the same changes as did Ch. 159, but with minor differences in style; added the second sentence to subdivision (j) (6); and deleted from the preliminary paragraph

of subdivision (j) (7) (A) a reference to paragraph (6) of that subsection.

Effective Date

Section 3 of Ch. 84, Laws 1965 read "This act shall be in full force and effect from and after April 1, 1965."

Employee or Independent Contractor

Despite fact that this section is used as a guide in the determination of the relationship between an employer and an individual performing services, the well established test in determining whether an individual is an employee or an independent contractor is also a guide to be used; lessee of self-service gasoline station was an employee for purposes of this act where he was required to make three reports weekly and daily bank deposits to lessor accounts, where the lessee was required to order gasoline from a distributor named by the lessor and where the total control of the gasoline lay with the lessor. *Pat Griffin Co. v. Employment Security Comm.*, — M —, 519 P 2d 147.

Independent Contractor

Logging trucker was an independent contractor and not covered by unemployment compensation under subdivision (j) (5) of this section where he provided his own truck, licensed and insured it in his own name, repaired it and paid operational costs himself, hauled logs from paper company's logging operation site to its log pond, was compensated by weight hauled, could take off any days he chose or could work for others, could hire any relief driver he wanted, could refuse any load he did not want, could choose any route of travel he wanted, and was working under a written contract describing him as an independent contractor and requiring him to carry his own industrial insurance, despite the fact that he had to enter the company's premises to load and unload and that the company determined the hours when crews would be available to assist in loading and unloading. *St. Regis Paper Co., Forest Products Division v. Unemployment Compensation Commission*, 157 M 548, 487 P 2d 524.

87-149. Definitions—continued. (a) Total unemployment:

(1) and (2). * * * [Same as parent volume.]

(3) As used in this subsection the term "wages" shall include only that part of remuneration for work which is in excess of twice the weekly benefit amount, and the term "service" shall include only that work in excess of twelve (12) hours in any one week.

(b) to (f). * * * [Same as parent volume.]

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969.

Amendments

The 1969 amendment, in subdivision (a)

(3), substituted "twice the weekly benefit amount" for "fifteen dollars (\$15.00) in any one week" in the definition of "wages"; and substituted present definition of "service" for one providing that "'services' shall not include work for which remuneration equal to or less than fifteen dollars (\$15.00) per week is payable, or for one (1) day's work not exceeding eight (8) hours, whichever is greater."

TITLE 87A—UNIFORM COMMERCIAL CODE

Chapter 9. Secured transactions—sales of accounts, contract rights and chattel paper,
87A-9-302.1 to 87A-9-302.3, 87A-9-402 to 87A-9-407.

CHAPTER 1—GENERAL PROVISIONS

Part 1—Short Title, Construction, Application and Subject Matter of the Act

87A-1-101. Short title.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Commercial Code: Alabama, Arizona, Colorado, Delaware,

Florida, Hawaii, Idaho, Iowa, Kansas, Minnesota, Mississippi, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Texas, Utah, Vermont, Washington, and also Virgin Islands.

Part 2—General Definitions and Principles of Interpretation

87A-1-201. General definitions.

Course of Dealing from which Agreement Implied

Payor bank's holding and paying of one check as to each of two of the plaintiff-payees was not sufficient to form "a sequence of previous conduct" under section 87A-1-205(1) necessary to establish

a course of dealing from which an agreement excusing noncompliance with "midnight rule" under section 87A-4-302 could be implied under subdivision (3) of this section. *Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A.*, — M —, 521 P 2d 679.

87A-1-205. Course of dealing and usage of trade.

Course of Dealing

Payor bank's holding and paying of one check as to each of two of the plaintiff-payees was not sufficient to form "a sequence of previous conduct" necessary to establish a course of dealing from which

an agreement excusing noncompliance with "midnight rule" under section 87A-4-302 could be implied under section 87A-1-201 (3). *Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A.*, — M —, 521 P 2d 679.

CHAPTER 2—SALES

Part 3—General Obligation and Construction of Contract

87A-2-314. Implied warranty—merchantability—usage of trade.

Breach of Warranty

Implied warranties of merchantability and fitness were not met by artificial insemination service which sold semen to cattle rancher who had experienced a ninety-five per cent calf crop via natural service prior to using artificial insemination, where the rancher experienced a seventy per cent calf crop with artificial

insemination in the first year and only a seven per cent calf crop in the second year using semen from the same bull under almost identical conditions; the only logical inference was that the semen purchased for use in the second year was defective. *Waddell v. American Breeders Service, Inc.*, — M —, 505 P 2d 417.

DECISIONS UNDER FORMER^{*} LAW**Manufacturer's Warranty**

Seller who did not manufacture laundry equipment made no implied warranty of fitness for intended use within former statute providing that one who manufactures an article under order for par-

ticular purpose warrants by sale that it is reasonably fit for that purpose, especially in view of seller's disclaimer printed on reverse side of sales agreement. *Ryan v. Ald, Inc.*, 149 M 367, 427 P 2d 53.

87A-2-315. Implied warranty—fitness for particular purpose.**Amendment of Complaint**

Granting plaintiff's motion to amend complaint to include theory of implied warranty of fitness for a particular purpose was error where motion was presented shortly before trial and plaintiff had relied upon theory of negligence through the entire course of pretrial proceedings; warranty theory was foreign to the proper pleading of the case and required defendant to be prepared for an entirely different defense theory. *McGuire v. Nelson*, — M —, 508 P 2d 558.

Breach of Warranty

Implied warranties of merchantability

and fitness were not met by artificial insemination service which sold semen to cattle rancher who had experienced a ninety-five per cent calf crop via natural service prior to using artificial insemination, where the rancher experienced a seventy per cent calf crop with artificial insemination in the first year and only a seven per cent calf crop in the second year using semen from the same bull under almost identical conditions; the only logical inference was that the semen purchased for use in the second year was defective. *Waddell v. American Breeders Service, Inc.*, — M —, 505 P 2d 417.

Part 6—Breach, Repudiation and Excuse**87A-2-607. Effect of acceptance, etc.****Timeliness of Notice of Breach**

In action to recover for breach of warranty of semen sold to cattle rancher by artificial insemination service, buyer gave timely notice of breach of warranty by

informing seller of calf crop failure ten months after artificial insemination process. *Waddell v. American Breeders Service, Inc.*, — M —, 505 P 2d 417.

Part 7—Remedies**87A-2-719. Contractual modification or limitation of remedy.****Limitation of Damages**

Clause in telephone company contract for "yellow pages" advertising, limiting liability for errors and omissions in advertising was a valid and binding limita-

tion rather than a contract fixing damages. *State ex rel. Mountain States Telephone & Telegraph Co. v. District Court*, — M —, 503 P 2d 526.

CHAPTER 3—COMMERCIAL PAPER**Part 1—Short Title, Form and Interpretation****87A-3-112. Terms and omissions not affecting negotiability.****Cross-Reference**

Waiver of statutory exemptions in unsecured note unenforceable, sec. 93-5813.1.

Part 4—Liability of Parties

87A-3-407. Alteration.

DECISIONS UNDER FORMER LAW

Material Alteration

In conviction of grand larceny, in which defendant had stolen and subsequently cashed check, the tearing of the check and

its repair did not constitute spoilation under former section 55-907, so as to make the check a nonnegotiable instrument. *State v. Romero*, 146 M 77, 404 P 2d 500.

Part 5—Presentment, Notice of Dishonor and Protest

87A-3-508. Notice of dishonor.

Oral Notice of Dishonor Insufficient Under Circumstances

Oral notice of dishonor of check was insufficient to release payor bank from strict liability rule under section 87A-4-302 where bank president told payee that, although it would take time, checks would

clear because things were looking better but checks were never paid and bank made withdrawals from drawer's account to apply against loans not in default. *Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A.*, — M —, 521 P 2d 679.

87A-3-511. Waived or excused presentment, etc.

Applicability

Subsection (4) does not apply to demand items; payor bank was not excused from failure to comply with "midnight deadline" rule of 87A-4-302 by subsection

(4) of this section where checks presented by payees were demand items. *Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A.*, — M —, 521 P 2d 679.

CHAPTER 4—BANK DEPOSITS AND COLLECTIONS

Part 1—General Provisions and Definitions

87A-4-103. Variation by agreement, etc.

Agreement Excusing Payor Bank from Noncompliance with "Midnight Rule"

There was no agreement between payor bank and payees excepting bank from strict liability for noncompliance with "midnight rule" of section 87A-4-302 in its failure to give timely notice of dishonor of checks since: (1) bank's holding and paying of one check as to each of two of the payees was not sufficient to form "a sequence of previous conduct" necessary to establish a course of dealing from which an agreement excusing noncompliance with "midnight rule" could be implied under sections 87A-1-201 (3) and 87A-1-205 (1); and (2) alleged understanding with one payee's agent would not be considered an agreement in view of bank's unique position as drawer's creditor. *Sun River Cattle Co., Inc. v.*

Miners Bank of Montana N. A., — M —, 521 P 2d 679.

Custom and Practice

Custom and practice are relevant under subsection (3), if at all, only with respect to establishment of what standard constitutes ordinary care; where payor bank was subject to higher standard of care because of its status as creditor of drawer of checks, its failure to comply with "midnight rule" of section 87A-4-302 in handling checks for collection could not be excused on ground that established custom and practice of Montana banking industry was to hold such checks for an arbitrary length of time in absence of special instructions and writing. *Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A.*, — M —, 521 P 2d 679.

87A-4-108. Delays.

Construction

Effect of subsection (2) of this section is to excuse a payor bank from the standard of strict accountability of section

87A-4-302 and to hold it to a standard of "diligence as the circumstances require"; under subsection (2) there must be a showing that the circumstances were be-

yond the control of the bank and that the bank exercised such diligence as the circumstances required; the burden of proof is on the bank. *Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A.*, — M —, 521 P 2d 679.

Degree of Diligence Required

Degree of diligence required of payor bank attempting to come under "escape clause" provisions of subsection (2) was greater than it otherwise would have been where bank had financed and refinanced drawers of checks and refinancing loans had not yet been completely repaid; showing of diligence required more than testi-

mony as to normal operating procedures; evidence that armored car which delivered checks to clearinghouse broke down on day checks were presented by payees and that clearinghouse's computer malfunctioned after checks were received by it the next day was insufficient to meet bank's burden of proof of excuse for violation of "midnight deadline" where there was no testimony as to what happened on day after checks were initially received by bank; bank was therefore liable for face amount of checks under strict accountability rule of section 87A-4-302. *Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A.*, — M —, 521 P 2d 679.

87A-4-302. Payor bank's responsibility for late return of item.

"Accountable" Construed

The word "accountable" as used in this section is synonymous with "liable." *Sun River Cattle Co., Inc. v. Miner's Bank of Montana N. A.*, — M —, 521 P 2d 679.

Construction

Essentially this section says that in absence of a valid defense, retention by payor bank of a demand item beyond the "midnight deadline" without either paying, returning or giving notice of dishonor renders the bank liable to the payee for the face amount of the item. *Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A.*, — M —, 521 P 2d 679.

"Midnight Rule"—Failure to Give Notice of Dishonor

"Midnight rule" was applicable to payor bank and rendered it liable to payees for face amount of checks presented for collection since: (1) the checks were demand items and section 87A-3-511 (4) was thus inapplicable and did not operate to excuse failure to give timely notice of dishonor; (2) there was no agreement between the parties under section 87A-4-103 excepting bank from strict liability since bank's holding and paying of one check as to each of two of the plaintiffs was not sufficient to form "a sequence of previous conduct" necessary to establish a course of dealing from which an agreement could be implied under sections 87A-1-201 (3) and 87A-1-205 (1); (3) alleged understanding with one payee's agent would

not be considered an agreement under section 87A-4-103 in view of bank's unique position as drawers' creditor; (4) any oral notice of dishonor given to one plaintiff was ineffective under the circumstances; and (5) custom and practice were not relevant since their relevancy lay only in establishing what standard should constitute ordinary care and bank was subject to more than ordinary standard of care because of its unique position. *Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A.*, — M —, 521 P 2d 679.

Strict Accountability

Degree of diligence required of payor bank attempting to come under "escape clause" provisions of 87A-4-108 (2) was greater than it would otherwise have been where bank had financed and refinanced drawers of checks and refinancing loans had not yet been completely repaid; evidence that armored car which delivered checks to clearinghouse broke down on day checks were presented by payees and that clearinghouse's computer malfunctioned after checks were received by it the next day was insufficient excuse for bank's delay beyond "midnight deadline" and did not relieve it of liability for face amount of checks under the strict accountability rule imposed by this section where there was no testimony as to what happened on day after checks were received by bank. *Sun River Cattle Co., Inc. v. Miners Bank of Montana N. A.*, — M —, 521 P 2d 679.

CHAPTER 8—INVESTMENT SECURITIES

Part 3—Purchase

87A-8-307. Effect of delivery without endorsement, etc.

DECISIONS UNDER FORMER LAW

Gift of Stock Certificate

Although endorsement may not be ab-

solutely necessary to valid gift of stock certificates, fact that alleged donor had

not endorsed certificates as required under former law was evidence that no delivery occurred and hence that there was no valid gift. *Bodine v. Bodine*, 149 M 29, 422 P 2d 650.

CHAPTER 9—SECURED TRANSACTIONS—SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

Part 3. Rights of Third Parties—Perfected and Unperfected Security Interests—Rules of Priority

- Section 87A-9-302.1. Financing statements of transmitting utilities—definitions.
 87A-9-302.2. Place of filing of utility financing statement—contents—perfection of security interest.
 87A-9-302.3. Continued effectiveness of certain laws.

Part 4. Filing

- Section 87A-9-402. Formal requisites of financing statement—amendments.
 87A-9-403. What constitutes filing—duration of filing—effect of lapsed filing—duties of filing officer.
 87A-9-404. Termination statement.
 87A-9-405. Assignment of security interest—duties of filing officer—fees.
 87A-9-406. Release of collateral—duties of filing officer—fees.
 87A-9-407. Information from filing officer.

Part 2—Validity of Security Agreement and Rights of Parties Thereto

87A-9-203. Enforceability of security interest, etc.

Compiler's Notes

Sections 53-123 to 53-128, contained in the reference to Chapter 1 of Title 53, in subsection (2) of this section in the par-

ent volume, were repealed by Sec. 1, Ch. 101, Laws 1959. Section 53-138 was repealed by Sec. 5, Ch. 256, Laws 1965.

Part 3—Rights of Third Parties—Perfected and Unperfected Security Interests—Rules of Priority

87A-9-302.1. Financing statements of transmitting utilities—definitions. As used in this act,

(a) "Transmitting utility" means: (1) Any corporation or other business entity primarily engaged, pursuant to rights or franchises issued by and subject to the jurisdiction of a state or federal regulatory body, in the railroad or street railway business, the telephone or telegraph business, the transmission of oil, gas or petroleum products by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, and (2) any other corporation primarily engaged in the production, transmission or distribution of electricity, or the furnishing of telephone service, whether or not such corporation is subject to the jurisdiction of a state or federal regulatory body.

(b) "Uniform Commercial Code" means Chapters 1 through 10 of Title 87A of the Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 76, L. 1965; amd. Sec. 1, Ch. 279, L. 1967.

Title of Act

An act relating to the Uniform Commercial Code of Montana by adding a new section to be known and codified as

section 87A-9-408, relating to the filing by certain public utilities of certain instruments required to be filed under the provisions of the Uniform Commercial Code; providing for a repealing clause; providing for a severability clause; and providing for an effective date.

Amendments

The 1967 amendment subdivided subsection (a), designating the first sentence

as subsection (a)(1) and adding subsection (a)(2), and made minor changes in punctuation.

87A-9-302.2. Place of filing of utility financing statement—contents—perfection of security interest. Financing statements of a transmitting utility, notwithstanding sections 87A-9-302(3), 87A-9-302(4), 87A-9-401(1), 87A-9-402, 87A-9-403, 87A-9-404, 87A-9-405 and 87A-9-406 of the Uniform Commercial Code.

(a) If filing is required under the Uniform Commercial Code, the proper place to file in order to perfect a security interest in personal property or fixtures of a transmitting utility or other corporation covered hereby is in the office of the secretary of state;

(b) When the financing statement covers goods of a transmitting utility which are or are to become fixtures, no description of the real estate concerned is required;

(c) A security interest in rolling stock of a transmitting utility may be perfected either as provided in section 20 (c) of the Interstate Commerce Act or by filing a financing statement pursuant to the Uniform Commercial Code as provided in subsection (a).

History: En. Sec. 2, Ch. 76, L. 1965; amd. Sec. 2, Ch. 279, L. 1967.

Repealing Clause

Section 3 of Ch. 279, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 279, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

Compiler's Note

Filing provisions of Interstate Commerce Act, see 49 U. S. C., sec. 20c.

Amendments

The 1967 amendment, in the first paragraph, inserted "87A-9-403, 87A-9-404, 87A-9-405 and 87A-9-406" after "87A-9-402"; in subdivision (a), inserted "or other corporation covered hereby" after "transmitting utility."

87A-9-302.3. Continued effectiveness of certain laws. Unless displaced by the specific provisions of this act, the Uniform Commercial Code and other applicable laws remain in full force and effect and supplement the provisions of this act.

History: En. Sec. 3, Ch. 76, L. 1965.

Repealing Clause

Section 4 of Ch. 76, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 5 of Ch. 76, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the

invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 6 of Ch. 76, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

87A-9-306. "Proceeds"—secured party's rights, etc.

Application of Proceeds

Where debtor's liquor license had been purchased with advances from bank under

security agreement, proceeds from sale of such license were to be applied first to notes secured by such security agreement,

then to note secured by an attachment, and finally to other obligations, since sale contract provided that all proceeds were to be placed in escrow with bank to whom all debts were owed. *Gallatin Trust & Savings Bank v. Darrah*, 153 M 228, 456 P 2d 288.

Res Judicata

Bankruptcy court's rulings that bankrupt did not exchange collateral within twelve months of petition in bankruptcy and that bankrupt did not hold legal title to property received in exchange did not preclude holder of security interest in the collateral from attempting to trace

the collateral, and the holder was not liable for malicious prosecution even though it was later held that the security interest was unperfected because filed in the wrong office. *3-D Lumber Co. v. Belgrade State Bank*, 157 M 481, 487 P 2d 1136.

Unperfected Security Interest

Subsection (2) did not apply and holder of security interest was not allowed to trace the proceeds of collateral exchanged, where the security interest had not been perfected because it had been filed in the wrong office. *Belgrade State Bank v. Elder*, 157 M 1, 482 P 2d 135.

87A-9-312. Priorities among conflicting security interests, etc.

DECISIONS UNDER FORMER LAW

Ranking of Priorities

Under statute making liquor license transferable personal property capable of being mortgaged to secure existing debt and other statute providing that mortgage first given, acknowledged and recorded was entitled to priority, owner of note

secured by properly recorded mortgage on liquor license was entitled to foreclose mortgage notwithstanding claim of lessor based on covenant in lease whereby lessee agreed not to move liquor license from property. *Gaskill v. Severovic*, 149 M 340, 426 P 2d 582.

Part 4—Filing

87A-9-401. Place of filing—erroneous filing—removal of collateral.

Forestry and Logging

Forestry and logging are not farming for the purposes of subdivision (1)(a) of this section; filing with the secretary

of state is necessary to perfect a security interest on equipment used for that purpose. *Belgrade State Bank v. Elder*, 157 M 1, 482 P 2d 135.

87A-9-402. Formal requisites of financing statement—amendments.

(1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. Except for financing statements filed pursuant to section 87A-9-302.2, R.C.M. 1947 when the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned and the name of the record owner or record lessee thereof. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

(2). * * * [Same as parent volume.]

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) _____

Address _____

Name of secured party (or assignee) -----

Address -----

Name of record owner or record lessee -----

Address -----

1. to 4. * * * [Same as parent volume.]

(4) and (5). * * * [Same as parent volume.]

History: En. Sec. 9-402, Ch. 264, L. 1963; amd. Sec. 1, Ch. 272, L. 1967.

Amendments

The 1967 amendment, in subsection (1), inserted "Except for financing statements filed pursuant to section 87A-9-302.2, R. C. M. 1947" at the beginning of the

third sentence and added "and the name of the record owner or record lessee thereof" after "real estate concerned"; and, in subsection (3), inserted after the name and address of the secured party "Name of record owner or record lessee" and "Address."

87A-9-403. What constitutes filing—duration of filing—effect of lapsed filing—duties of filing officer. (1). * * * [Same as parent volume.]

(2) A filed financing statement which states a maturity date of the obligation secured of five (5) years or less is effective until such maturity date and thereafter for a period of sixty (60) days. Any other filed financing statement is effective for a period of five (5) years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such sixty-day period after a stated maturity date or on the expiration of such five-year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected. A filed financing statement which states that the obligation secured is payable on demand is effective for five (5) years from the date of filing.

(3) A continuation statement may be filed by the secured party (i) within six (6) months before [and] sixty (60) days after a stated maturity date of five (5) years or less, and (ii) otherwise within six (6) months prior to the expiration of the five-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five (5) years after the last date to which the filing was effective whereupon its lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.

(4). * * * [Same as parent volume.]

(5) Except financing statements filed pursuant to section 87A-9-302.2, R.C.M., 1947, if the instrument covers crops growing or to be grown or goods which are, or are to become fixtures, or timber, said instrument shall be indexed in accordance with the requirements applicable to the recording of mortgages of real estate under the laws of this state. For

the purpose of such indexing, each of the debtor (or assignor) and the record owner or record lessee of any real estate described in the financing statement shall be considered a mortgagor with respect to the financing statement and the secured party (or assignee) shall be considered a mortgagee with respect to the financing statement.

(6) If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing, and furnishing filing data for an original or a continuation statement shall be fifteen dollars (\$15.00). In all other cases the uniform fee for filing, indexing and furnishing filing data for an original or a continuation statement shall be two dollars (\$2).

History: En. Sec. 9-403, Ch. 264, L. 1963; amd. Sec. 2, Ch. 272, L. 1967; amd. Sec. 4, Ch. 185, L. 1971.

Amendments

The 1967 amendment added a new subsection (5); redesignated old subsection (5) as new subsection (6); and substituted "data" for "date" after "furnishing filing" in the second sentence.

The 1971 amendment increased the fee specified at the end of subsection (6) from one dollar to two dollars; deleted from the end of subsection (6) a clause reading "except that where recording is done by photographic or other similar process the uniform fee shall be two dollars (\$2.00) for each page or fraction thereof of such original or continuation statement"; and made minor changes in style.

87A-9-404. Termination statement. (1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number, and by document number, as the case may be. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement thereof shall be two dollars (\$2). If the affected secured party fails to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars (\$100), and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. The filing officer shall remove from the files, mark "terminated" and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the termination statement must be indexed in accordance with the requirements applicable to releases of real estate mortgages.

(3) If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing and indexing a termination statement including sending or delivering the financing statement shall be fifteen

dollars (\$15.00). In all other cases the uniform fee for filing and indexing a termination statement including sending or delivering the financing statement shall be two dollars (\$2).

History: En. Sec. 9-404, Ch. 264, L. 1963; amd. Sec. 3, Ch. 272, L. 1967; amd. Sec. 5, Ch. 185, L. 1971.

Amendments

The 1967 amendment, added "and by document number, as the case may be" after "by file number" in the first sentence of subsection (1); and, inserted the third sentence in subsection (2).

The 1971 amendment increased the fees specified at the end of the third sentence of subsection (1) and at the end of the second sentence of subsection (3) from one dollar to two dollars; deleted from

the end of the third sentence of subsection (1) a clause reading "except that where recording is done by photographic or other similar process the uniform fee shall be two dollars (\$2.00) for each page or fraction thereof of such assignment or statement"; deleted from the end of subsection (3) a clause reading "except that where recording is done by photographic or other similar process the uniform fee shall be two dollars (\$2.00) for each page or fraction thereof of such termination statement"; and made minor changes in style.

87A-9-405. Assignment of security interest—duties of filing officer—fees. (1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in section 87A-9-403 (4). If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be fifteen dollars (\$15.00). In all other cases the uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be two dollars (\$2).

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the statement of assignment must contain a reference to the document number of such original or continuation statement and must be indexed in accordance with the requirements applicable to assignments of mortgages. If the collateral is equipment or rolling stock, of railroads or street railways, the fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be fifteen dollars (\$15.00). In all other cases the uniform fee for

filing, indexing and furnishing filing data about such a separate statement of assignment shall be two dollars (\$2).

(3). * * * [Same as parent volume.]

History: En. Sec. 9-405, Ch. 264, L. 1963; amd. Sec. 4, Ch. 272, L. 1967; amd. Sec. 6, Ch. 185, L. 1971.

Amendments

The 1967 amendment substituted "data" for "date" in the fifth sentence of subsection (1); and inserted the fifth sentence in subsection (2).

The 1971 amendment increased the fees specified at the end of subsection (1) and at the end of subsection (2) from one dollar to two dollars; and deleted from the end of each of such subsections a clause reading "except that where recording is done by photographic or other similar process the uniform fee shall be two dollars (\$2.00) for each page or fraction thereof of such statement."

87A-9-406. Release of collateral—duties of filing officer—fees. A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the statement of release must contain a reference to the document number of such original or continuation statement, and must be indexed in accordance with the requirement applicable to release of mortgages. If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing and noting such a statement of release shall be fifteen dollars (\$15.00). In all other cases the uniform fee for filing and noting such a statement of release shall be two dollars (\$2).

History: En. Sec. 9-406, Ch. 264, L. 1963; amd. Sec. 5, Ch. 272, L. 1967; amd. Sec. 7, Ch. 185, L. 1971.

Amendments

The 1967 amendment inserted the fourth sentence.

The 1971 amendment increased the fee specified at the end of the section from one dollar to two dollars; deleted from the end of the section a clause reading

"except that where recording is done by photographic or other similar process the uniform fee shall be two dollars (\$2.00) for each page or fraction thereof of such statement"; and made a minor change in phraseology.

Repealing Clause

Section 6 of Ch. 272, Laws 1967 repealed all acts and parts of acts in conflict therewith.

87A-9-407. Information from filing officer. (1). * * * [Same as parent volume.]

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the name and addresses of each secured party therein. The uniform fee for such a certificate shall be three dollars (\$3). Upon request the filing officer shall furnish a copy

of any filed financing statement or statement of assignment for a uniform fee of fifty cents (50¢) per page.

History: En. Sec. 9-407, Ch. 264, L. 1963; amd. Sec. 8, Ch. 185, L. 1971.

Amendments

The 1971 amendment substituted "three dollars (\$3.00)" at the end of the second

sentence of subsection (2) for "one dollar (\$1.00) plus thirty cents (30¢) for each financing statement and for each statement of assignment reported therein"; and made a minor change in phraseology.

Part 5—Default

87A-9-504. Secured party's right to dispose of collateral after default, etc.

Commercially Reasonable Disposition of Property

Sale of business machinery at private sale for \$300 was not commercially unreasonable where guarantors of lease were given advance notice of the sale and declined to bid over \$300 for the property; that one of the business machines was

later placed on sale to the public for \$295 failed to show the sale to be commercially unreasonable since the increase in price was normal, taking into account the expenses of preparation for sale and the commercial mark-up common to the particular trade. *Business Finance Co., Inc. v. Red Barn, Inc.*, — M —, 517 P 2d 383.

87A-9-505. Compulsory disposition of collateral, etc.

Effect of Notice of Intent to Sell Pledged Collateral

Defaulting debtors could not rely on subsection 2 of this section to contend that secured party's actions in achieving a sale constituted a rescission and satisfaction of the debt so as to bar further recovery where defaulting debtors were

given notice of an intent to enforce security interest by means of a sale of pledged collateral and where secured party obtained a writ of mandate ultimately effectuating a sale. *Stensvad v. Miners and Merchants Bank of Roundup*, — M —, 517 P 2d 715.

DECISIONS UNDER FORMER LAW

Conditional Sales Contract

Upon default of conditional sales contract, seller could treat contract as existing but broken by buyer and maintain

action for damages for breach under former statute. *White v. Nollmeyer*, 151 M 387, 443 P 2d 873.

TITLE 88—WAREHOUSES AND STORAGE

CHAPTER 2—LOCATION OF WAREHOUSES AND ELEVATORS ON RAILROAD RIGHT OF WAY

88-207. (6644) Connection of railroad with elevator—sidetracks.

Compiler's Notes

Section 21, Ch. 315, Laws 1974, substituted "public service commission" in

this section for "board of railroad commissioners of the state of Montana."

TITLE 89—WATERS AND IRRIGATION

Chapter

1. Water Resources Act, 89-101.1, 89-101.2, 89-102, 89-102.1, 89-103.2, 89-103.7, 89-104 to 89-106, 89-111, 89-113 to 89-115, 89-116.1, 89-117 to 89-120, 89-124, 89-125, 89-127, 89-132.1, 89-140, 89-142.
3. Weather modification activities, 89-310, 89-312 to 89-331.
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8. Water rights—appropriation and adjudication, 89-806, 89-865 to 89-8-111.
9. Yellowstone River Compact, ratification of, 89-906 to 89-909, 89-912, 89-914 to 89-916.
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12. Irrigation districts—organization, 89-1201, 89-1208, 89-1215.
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23. Drainage districts—commissioners—election—organization—reports, 89-2330, 89-2330.1 to 89-2330.3, 89-2332 to 89-2334, 89-2337, 89-2338, 89-2348.
24. Drainage districts—taxes and assessments, 89-2401, 89-2405, 89-2410.
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29. Appropriation and regulation of ground water, 89-2911, 89-2914 to 89-2918, 89-2926, 89-2927, 89-2828.1, 89-2930 to 89-2934.1, 89-2936.
33. County and municipal participation in flood control and water conservation, 89-3301 to 89-3309, 89-3309.1, 89-3310 to 89-3314.
34. Conservancy districts, 89-3401 to 89-3449.
35. Floodway management and regulation, 89-3501 to 89-3515.

CHAPTER 1—WATER RESOURCES ACT

- | | |
|---------|---|
| Section | 89-101.1. Short title. |
| | 89-101.2. State necessity and policy. |
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| | 89-127. Sale or disposal of waters—disposal of waterworks systems, provision for. |
| | 89-132.1. State water plan. |
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| | 89-142. Department of natural resources and conservation authorized to negotiate with other states regarding interstate waters. |

89-101. (349.1) Repealed.**Repeal**

This section (Sec. 1, Ch. 35, Ex. L. 1933), relating to the state purpose of

water conservation, was repealed by Sec. 7, Ch. 158, Laws 1967.

89-101.1. Short title. This chapter shall be known and may be cited as the "Montana Water Resources Act."

History: En. Sec. 1, Ch. 158, L. 1967; amd. Sec. 118, Ch. 253, L. 1974.

Title of Act

An act providing for the Montana Water Resources Act of 1967; providing an expanded statement of state necessity and policy relating to water resources; amending section 89-103, R. C. M. 1947, providing that name of the state water conservation board shall be changed to Montana water resources board; providing additional powers for the Montana water resources board; providing for a comprehensive inventory of water resources; pro-

viding for a state water plan; amending section 89-102, R. C. M. 1947, providing additional definitions; amending section 89-813, R. C. M. 1947, providing that county clerks and recorders shall furnish the Montana water resources board with copies of water appropriations and transfers of water appropriations; and repealing section 89-101, R. C. M. 1947.

Amendments

The 1974 amendment substituted "chapter" for "act" and deleted "of 1967" after "Water Resources Act."

89-101.2. State necessity and policy. It is hereby declared that:

(1) The general welfare of the people of Montana, in view of the state's population growth and expanding economy, requires that water resources of the state be put to optimum beneficial use and not wasted.

(2) The public policy of the state is to promote the conservation, development and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens.

(3) The state, in the exercise of its sovereign power, acting through the department of natural resources and conservation shall co-ordinate the development and use of the water resources of the state so as to effect full utilization, conservation and protection of its water resources.

(4) The development and utilization of water resources, and the efficient, economic distribution thereof, are vital to the people in order to protect existing uses and to assure adequate future supplies for domestic, industrial, agricultural and other beneficial uses.

(5) The water resources of the state must be protected and conserved to assure adequate supplies for public recreational purposes and for the conservation of wildlife and aquatic life.

(6) The public interest requires the construction, operation and maintenance of a system of works for the conservation, development, storage, distribution and utilization of water, which construction, operation and maintenance is a single object and is in all respects for the welfare and benefit of the people of the state.

(7) It is necessary to co-ordinate local, state and federal water resource development and utilization plans and projects through a single agency of state government, the department of natural resources and conservation.

(8) The greatest economic benefit to the people of Montana can be secured only by the sound co-ordination of development and utilization of

water resources with the development and utilization of all other resources of the state.

(9) To achieve these objectives, and to protect the waters of Montana from diversion to other areas of the nation, it is essential that a comprehensive, co-ordinated multiple-use water resource plan be progressively formulated, to be known as the "state water plan."

History: En. Sec. 2, Ch. 158, L. 1967; am. Sec. 119, Ch. 253, L. 1974.

ences to "department of natural resources and conservation" for references to "water resources board" in subdivisions (3) and (7) and made minor changes in phraseology.

Amendment

The 1974 amendment substituted refer-

89-102. (349.2) Definitions. Unless the context requires otherwise, in this chapter:

(1) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(2) "Board" means the board of natural resources and conservation provided for in section 82A-1509.

(3) "Works" means all property, rights, easements and franchises relating thereto and deemed necessary or convenient for their operation, and all water rights acquired or exercised by the department in connection with those works, and includes all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines and waterworks systems and includes all such works for the conservation, development, storage, distribution and utilization of water including, without limiting the generality of the foregoing, works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, supplying of water for public, domestic, industrial or other uses, and for fire protection.

(4) "Cost of works" means the cost of construction, the cost of all lands, property, rights, easements and franchises acquired, which are deemed necessary for the construction, the cost of all water rights acquired or exercised by the department in connection with those works, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding three (3) years after the completion of construction, cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized and the construction of the works and the placing of the same in operation; however, the department in determining the cost of works may make nonreimbursable allowances for costs of public benefits, including, but not limited to, irrigation, recreation, flood prevention, fish and wildlife, and stream stabilization.

(5) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies or asso-

ciations having any title or interest in any properties, rights, easements or franchises to be acquired.

(6) "Project" means any one of the works hereinabove defined or any combination of such works which are physically connected or jointly managed and operated as a single unit.

(7) If water rights are acquired or exercised by the department in connection with two (2) or more works or projects, the department by order shall apportion or allocate to each of the works or projects such part of those water rights as it may determine, and upon the adoption of the order, those water rights shall be considered a part of each of the works or projects to the extent that the water rights have been so apportioned or allocated thereto respectively.

History: En. Sec. 2, Ch. 35, Ex. L. 1933; amd. Sec. 1, Ch. 95, L. 1935; amd. Sec. 1, Ch. 163, L. 1965; amd. Sec. 3, Ch. 158, L. 1967; amd. Sec. 120, Ch. 253, L. 1974.

Amendments

The 1965 amendment inserted "waste canals, drainage canals, dikes" in paragraph (b); inserted "flood prevention, drainage, fish and wildlife, recreation" near the end of paragraph (b); substituted "industrial or other uses and for fire protection" at the end of paragraph (b) for "industrial and other uses for fire protection"; added the proviso at the end of paragraph (c); and inserted "drainage districts, flood control districts" in paragraph (d).

The 1967 amendment, in subdivision (a), substituted "Montana water resources" for "state water conservation."

The 1974 amendment rewrote the introductory clause which read: "As used in this act, the following words and terms shall have the following meanings"; inserted subdivision (1); designated former subdivisions (a) to (f) as (2) to (7); rewrote present subdivision (2) which defined "board" as the water resources board; substituted "department" for "board" in present subdivisions (3), (4) and (7); substituted "order" for "resolution" in two instances in present subdivision (7); and made minor changes in phraseology and punctuation.

89-102.1. Rules of board. The board may adopt from time to time, as necessary or expedient, suitable rules for the administration of this chapter.

History: En. 89-102.1 by Sec. 121, Ch. 253, L. 1974.

89-103, 89-103.1. (349.3) Repealed.

Repeal

Sections 89-103 and 89-103.1 (Sec. 3, Ch. 35, Ex. L. 1933; Sec. 50, Ch. 177, L. 1965; Sec. 1, Ch. 278, L. 1965; Sec. 1,

Ch. 279, L. 1965; Sec. 4, Ch. 158, L. 1967), relating to the water resources board and its director, were repealed by Sec. 108, Ch. 253, Laws of 1974.

89-103.2. Powers and duties of department subject to approval of board. The department may not acquire by appropriation or otherwise a water right or interest therein and may not acquire real property or an interest therein (except rights of access for the purpose of construction, operation, or maintenance of works) or mortgage or otherwise create a lien on the same or dispose of in any manner water rights or real property or interest therein without prior approval of the board. The department may not construct or cause to be constructed or contract for the construction of works or projects without prior approval of the board. The department may not loan funds to a person or water user association for the purpose of constructing or maintaining works without prior approval of the board.

History: En. Sec. 2, Ch. 279, L. 1965; amd. Sec. 122, Ch. 253, L. 1974.

Amendments

The 1974 amendment deleted "The director shall be the chief administrative office [officer] of the state water conservation board and shall perform and execute in the name of the board all ministerial acts required of the state water conservation board by law and shall perform and execute such other duties as may be required by said board, provided that" at the beginning of the section; substituted "department" for "director" at the begin-

ning of the first and second sentences; inserted "except rights of access for the purpose of construction, operation, or maintenance of works" in the first sentence; substituted "real property or interest therein without prior approval of the board" for "property without specific authorization from and approval of said board" at the end of the first sentence; substituted "prior approval of the board" for "specific authorization from and approval of said board" at the end of the second sentence; added the third sentence and made minor changes in phraseology and punctuation.

89-103.3 to 89-103.6. Repealed.

Repeal

Sections 89-103.3 to 89-103.6 (Sec. 3, Ch. 279, L. 1965; Secs. 17 to 19, Ch. 280, L. 1965; Sec. 14, Ch. 237, L. 1967), relating to salary of director and transfer of

powers, records, property and funds of Carey Land Act board and state engineer to water resources board, were repealed by Sec. 108, Ch. 253, Laws of 1974.

89-103.7. Yellowstone compact obligations unimpaired. Nothing in this act contained shall in any manner impair the obligations of the state of Montana under the Yellowstone River Compact.

History: En. Sec. 20, Ch. 280, L. 1965.

Title of Act

An act repealing sections 81-2006, 81-2008, 81-2010, 81-2012, R. C. M. 1947, thereby abolishing the office of state engineer; amending sections 81-2009, 81-2018, 82-3001, 89-702, 89-847, 89-848, 89-849, 89-851, 89-907, 89-908, 89-909, 89-912, 89-914, 89-1201, and 89-2911, R. C. M. 1947, to provide for the transfer of certain duties of the state engineer to the state water conservation board; abolishing the Carey Land Act board; repealing sections 81-2001, 81-2002, 81-2003, 81-2004, 81-2005, 81-2007, 81-2013, 81-2015, 81-2017, 81-2101 through 81-2121, 81-2123 and 81-2125 through 81-2130, R. C. M. 1947; providing for the transfer of the book and records

and funds of the Carey Land Act board and the office of the state engineer to the state water conservation board; and providing that nothing in this act contained shall impair the obligations of the state of Montana under the Yellowstone River Compact or the obligations of the state of Montana, or the state water conservation board contracted prior to the effective date of this act.

Repealing Clause

Section 22 of Ch. 280, Laws 1965 read "Sections 81-2001, 81-2002, 81-2003, 81-2004, 81-2005, 81-2007, 81-2013, 81-2015, 81-2017, 81-2101 through 81-2121, 81-2123 and 81-2125 through 81-2130, R. C. M. 1947, are repealed."

89-103.8. Repealed.

Repeal

Section 89-103.8 (Sec. 21, Ch. 280, L. 1965), providing that nothing in the act should impair any prior obligations of the

state, water conservation board or Carey Land Act board, was repealed by Sec. 108, Ch. 253, Laws of 1974.

89-104. (349.4) Acquisition of necessary property. (1) The department, subject to the approval of the board under section 89-103.2, may acquire by purchase, or exchange upon terms and conditions and in a manner it considers proper, and acquire by condemnation in accordance with laws applicable to the condemnation of property for public use, any land, rights, water rights, easements, franchises and other property considered necessary for the construction, operation and maintenance of works. Title to

property purchased or condemned shall be taken in the name of the department. The department is under no obligation to accept and pay for any property condemned under this act except from the funds provided by this act, and in any proceedings to condemn, orders may be made by the court having jurisdiction of the suit, action or proceeding as may be warranted by law and the facts.

(2) In condemnation proceedings brought under the the powers of eminent domain for the purpose of carrying out this act, all persons interested in the title of or holding liens upon the property sought to be acquired as disclosed by the public records, shall be made parties, and the court in the action shall partition and distribute the damages awarded, if any, among those persons as their rights appear. If there is controversy between them the court may direct the amount of the damage awarded to be paid into court to abide the result of further appropriate proceedings either at law or in equity.

(3) The taking possession of the property sought to be condemned may not be delayed by reason of any dispute between the rival claimants or the failure to join any of them as a party to the proceedings in condemnation.

History: En. Sec. 4, Ch. 35, Ex. L. 1933; amd. Sec. 123, Ch. 253, L. 1974.

Amendments

The 1974 amendment inserted the subsection designations; substituted "depart-

ment" for "board" in three places in subsection (1); inserted "subject to the approval of the board under section 89-103.2" near the beginning of subsection (1); and made minor changes in phraseology throughout the section.

89-105. (349.5) Power of department to construct works and to act beyond jurisdiction. (1) Subject to the approval of the board, the department may construct works, the cost of the construction to be paid wholly by means of or with the proceeds of revenue bonds hereinafter authorized or of a grant to aid in financing the construction from the United States or any instrumentality or agency thereof and of other funds provided under the authority of this act. Before constructing a project, the department shall estimate the cost of the project, the cost of maintaining, repairing and operating it, and the revenues to be derived therefrom, and a project may not be constructed unless, according to the estimates, the revenues to be derived will be sufficient to pay the cost of maintaining, repairing and operating it, and to pay the principal and interest of revenue bonds which may be issued for the cost of the project; however, in connection with the issuance of revenue bonds, the failure of the department to make the estimates required by this section or to make them in proper form does not affect the validity or enforceability of those bonds or of the trust indenture, resolution or other security therefor.

(2) However, should the bid of the lowest responsible bidder on any capital improvement associated with public works as defined in this section exceed the department estimates of the cost of the improvements by more than five per cent (5%), the department shall obtain approval from the water user association before the bid is accepted; however, capital improvements of an emergency nature necessary to protect life or property or to supply immediate needs for water do not require such approval.

(3) The purpose of this act is to meet, so far as possible, a state-wide need for the conservation and use of water, through the construction and operation of projects designed for those purposes. The department may make investigations as are necessary to plan and carry out a comprehensive state-wide program of water conservation. The projects to be finally constructed shall qualify as parts of the state-wide program and shall be approved by the board upon the showing of their prospective ability to meet, through the sale of water or other services, the cost of operation, maintenance and repair and the amortization of the cost of the construction; however, the failure of the board to determine the prospective ability of a project does not affect the validity or enforceability of the bonds or of the trust indenture, resolution, or other security therefor.

(4) The department may exercise any of its powers:

(a) In an adjoining state, unless the exercise of that power is not permitted under the laws of that state or of the United States.

(b) In a national forest or public domain of the United States adjoining, or located in, the state of Montana, unless the exercise of those powers is not permitted under the laws of the United States.

(c) In an adjoining country unless the exercise of those powers is not permitted under the laws of that country or of the United States or under the treaties between that country and the United States.

History: En. Sec. 5, Ch. 35, Ex. L. 1933; amd. Sec. 2, Ch. 95, L. 1935; amd. Sec. 1, Ch. 278, L. 1973; amd. Sec. 124, Ch. 253, L. 1974.

Amendments

The 1973 amendment substituted "department" for "board" near the beginning of the second sentence in the first paragraph; and inserted the second paragraph.

The 1974 amendment inserted the sub-

section designations; inserted "Subject to the approval of the board" at the beginning of subsection (1); substituted "department" for "board" throughout the section; substituted "water user association" for "works user association" in subsection (2); deleted the proviso at the end of subdivision 4(c) in the parent volume; and made minor changes in phraseology.

89-106. Department may construct irrigation works across streams, highways, etc. (1) The department may construct irrigation works across any stream of water, watercourse, streets, avenues, highways, railways, canals, ditches or flumes in such manner as to afford security to life and property. The department shall restore the same, when so crossed or intersected, to its former state, as near as may be, so as not to destroy its usefulness. A company whose railroads are intersected or crossed by the works shall unite with the department in forming the intersection and crossing. If the railroad company and the department, or the owners and controllers of the property, thing, or franchise so to be crossed cannot agree upon the amount to be paid therefor, or the points or the manner of the crossing or intersections, the amount shall be ascertained and determined in all respects as herein provided in respect to taking of land for public use.

(2) This section does not require the payment to the state or any subdivision thereof, of a sum for the right to cross a public highway with the works. A right of way is hereby given, dedicated, and set apart to

locate, construct, and maintain the works over and through the lands which are the property of this state.

History: En. Sec. 1, Ch. 69, L. 1937; amd. Sec. 125, Ch. 253, L. 1974.

Amendments

The 1974 amendment inserted the subsection designations; substituted "department" for "state water conservation

board" and, in three instances, for "board" in subsection (1); deleted "which the route of said canal or canals may intersect or cross" after "flumes" in subsection (1); and made minor changes in phraseology and punctuation.

89-107, 89-108. Repealed.

Repeal

Sections 89-107 and 89-108 (Secs. 1, 2, Ch. 155, L. 1937), authorizing the water conservation board to construct the Sid-

ney pumping project and divert water from the Yellowstone river, were repealed by Sec. 108, Ch. 253, Laws of 1974.

89-111. (349.8) Trust indenture, resolution and covenants of board.

(1) In the discretion of the board, a series of the bonds may be secured by a trust indenture by and between the board and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Each trust indenture or an executed counterpart thereof shall be filed in the office of the secretary of state of Montana. The filing of a trust indenture or an executed counterpart thereof in the office of the county clerk of the county in which the property covered by the trust indenture is located is constructive notice of its contents to all persons from the time of the filing, and the recording of the trust indenture or its contents is not necessary.

(2) Either the resolution providing for the issuance of bonds or the trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable and proper, not in violation of law, including covenants setting forth the duties of the state, the board, and the department in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the works, the custody, safeguarding and application of all moneys, and it may provide that the works shall be acquired, constructed, or partly acquired and partly constructed and paid for under the supervision and approval of consulting engineers employed or designated by the department and satisfactory to the original purchasers of the bonds issued therefor, their successors, assigns, or nominees, who may be given the right to require that security given by contractors and by any depository of the proceeds of the bonds or receipts and revenues of the works, or other moneys pertaining thereto, shall be satisfactory to the purchasers, successors, assigns, or nominees. The resolution or indenture may set forth the rights and remedies of the bondholders and trustee, restricting the individual rights of action of bondholders as is customary in trust indentures, deeds of trusts and mortgages securing bonds or debentures of corporations. No enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained. All expenses incurred in carrying out the trust indenture may be treated as a part of the cost of maintenance, operation and repairs of the works affected by the indenture.

(3) In connection with the issuance of the bonds for the purpose of paying in whole, or as supplemented by a grant from the United States or any instrumentality or agency thereof, the cost of the works or project, or in order to secure the payment of the bonds, the board may :

(a) Pledge all or any part of the income, profit and revenue of the works or project, and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale or other disposition of all or any part of the works or project, and covenant to pay the income, profit and revenue into the appropriate water fund and sinking fund.

(b) Covenant against pledging all or any part of the income, profit and revenue of the works or project and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale or other disposition of all or any part of the works or project.

(c) Covenant against mortgaging all or any part of the works or project, or against permitting or suffering any lien thereon.

(d) Covenant to fix and establish such prices, rates and charges for water and other services made available in connection with the works or project so as to provide at all times funds which will be sufficient, (1) to pay all costs of operation and maintenance of the works or project together with necessary repairs thereto, and (2) to meet and pay the principal and interest of all the bonds as they severally become due and payable, and (3) to create such reserves for the principal and interest of all the bonds and for the meeting of contingencies in the operation and maintenance of the works or project as the board determines; and make such further covenants as to such prices, rates and charges as the board determines.

(e) Create special funds, in addition to those required by this act, for moneys reserved for principal and interest on bonds or for the meeting of contingencies in the operation and maintenance of the works or project and determine the manner in which, and the depository or depositories in which, those funds shall be deposited and the manner in which they shall be secured, and it is lawful for any bank or trust company incorporated under the laws of the state to act as that depository and to furnish such indemnifying bonds or to pledge such securities as required by the board.

(f) Provide for the replacement of lost, destroyed or mutilated bonds.

(g) Covenant against extending the time for the payment of the principal or interest on any of the bonds, directly or indirectly by any means or in any manner.

(h) Prescribe and covenant as to the events of default and terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which the declaration and its consequences may be waived.

(i) Covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation.

(j) Vest in a trustee or trustees the right to enforce any covenant made to secure or to pay the bonds, or to foreclose any trust indenture in relation thereto, provide for the powers and duties of the trustee or trustees, limit the liabilities thereof, and provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce the covenant or exercise the right of foreclosure.

(k) Make such covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure the bonds, or, in the absolute discretion of the board, to make the bonds more marketable, notwithstanding that the covenants, acts or things may not be enumerated or expressly authorized herein.

(1) Do all things in the issuance of the bonds, and provide for their security, not inconsistent with the constitution of Montana.

History: En. Sec. 8, Ch. 35, Ex. L. 1933; amd. Sec. 3, Ch. 95, L. 1935; amd. Sec. 126, Ch. 253, L. 1974.

department" after "board" and substituted "department" for "board" in subsection (2); and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment inserted "and the

89-113. (349.10) Funds. The board shall create a fund to be known as "administration fund" and shall also create three (3) separate funds in respect of the bonds of each series, one (1) fund to be known as the "construction fund, series," another fund to be known as the "water fund, series," and another fund to be known as the "sinking fund, series," each fund to be identified by the same series letter or letters as the bonds of the series. The moneys in each fund shall be deposited in such depository or depositories and secured in such manner as determined by the board. It is lawful for any bank or trust company incorporated under the laws of this state to act as the depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the board. A separate account shall be kept in each construction fund and in each water fund for each project. All expenditures not properly chargeable to the construction fund account or to the water fund account of any one project shall be charged by the department in such proportions as it shall determine to the construction fund accounts or to the water fund accounts, as the case may be, of the projects in respect of which the expenditures were incurred.

History: En. Sec. 9, Ch. 35, Ex. L. 1933; amd. Sec. 127, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board" in the last sentence; and made minor changes in phraseology.

89-114. (349.11) Construction funds. The proceeds of the bonds of each series issued under this act shall be placed to the credit of the appropriate construction fund, which fund shall at all times be kept segregated and set apart from all other funds. There shall also be credited to the appropriate construction fund all accrued interest upon the bonds and the interest received upon the deposits of moneys in the fund and moneys received by way of grant from the United States or from any other source

for the construction of the works. The moneys in each construction fund shall be paid out or disbursed in such manner as may be determined by the department, subject to this act, to pay the cost of the works. Any surplus which may remain in any construction fund after providing for the payment of the cost of the works shall be added to and become a part of the appropriate sinking fund hereinafter provided for.

History: En. Sec. 10, Ch. 35, Ex. L. 1933; amd. Sec. 128, Ch. 253, L. 1974.

partment" for "board" in the third sentence; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

89-115. (349.12) Water funds—rates—sale of water—appeals to board—lease and sale of water rights and property. (1) Subject to this act and section 89-103.2, the department may fix and establish the prices, rates and charges at which the resources and facilities made available under this act may be sold and disposed of; enter into contracts and agreements, and do those things which in its judgment are necessary, convenient or expedient for the accomplishment of the purposes and objects of this act, under such general regulations and upon such terms, limitations and conditions as it prescribes; the department shall enter into the contracts and fix and establish the prices, rates and charges so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance of the works authorized by this act, together with necessary repairs thereto, and which will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable; this act does not authorize any change, alteration or revision of those rates, prices or charges as established by any contract entered into under this act except as provided by the contract.

(2) An incorporated water users' association that is sustaining and responsible for the operations of a works is solely liable for any court action which may be brought against it or the state of Montana for any injury or damages occurring on the works caused by a failure to maintain safe working and operating conditions.

(3) A contract made by the department for the sale of water, use of water, water storage or other service, or for the sale of any property or facilities, shall provide that in the event of a failure or default in the payment of moneys specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations thereunder. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage or other service under the contract does not deprive the department of, or limit any remedy provided by the contract or by law for the recovery of moneys due or which may become due under the contract.

(4)(a) A person aggrieved by a decision of the department to terminate any contract under subsection (3) may appeal to the board and be heard thereon by filing written notice of the appeal with the department within ten (10) days after receiving notice of termination of the contract from the department. The termination of the contract shall be stayed if an appeal is taken.

(b) If a dispute arises between the department and another party regarding amounts owing or the terms and conditions under a water marketing or water purchase contract, or under a contract for the construction or repair of works, that party may appeal to the board for a hearing thereon and a resolution of the dispute by filing written notice of the appeal with the department within thirty (30) days after the final decision of the department regarding the dispute.

(5) Subject to the approval of the board under section 89-103.2, the department may sell, transfer to water user associations, abandon or otherwise dispose of any rights of way, easements or property when it determines that they are no longer needed for the purposes of this act, or lease or rent the same or otherwise take and receive the income or profit and revenue therefrom. A determination shall be made by the department as to the market value of rights of way, easements or property to be sold, transferred, abandoned or otherwise disposed of. All income or profit and revenue of the works and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale or other disposition of the works, property and facilities acquired under this act, shall be deposited to the state general fund.

History: En. Sec. 11, Ch. 35, Ex. L. 1933; amd. Sec. 1, Ch. 459, L. 1973; amd. Sec. 129, Ch. 253, L. 1974.

Amendments

The 1973 amendment inserted "of natural resources and conservation" after "board" at the beginning of the first paragraph; inserted the second paragraph; inserted "transfer to user associations, abandon" near the beginning of the fourth paragraph; inserted the second sentence in the fourth paragraph; and substituted "deposited to the state general fund" for "paid to the credit of the appropriate water fund" at the end of the fourth paragraph.

The 1974 amendment inserted the subsection designations; substituted "Subject to this act and section 89-103.2, the department may" for "The board of natural resources and conservation is hereby authorized and empowered, subject to the provisions of this act" at the beginning of subsection (1); substituted references to "department" for references to "board" throughout the section; inserted "or loans" after "bonds" in subsection (1); inserted subsection (4); substituted "Subject to the approval of the board under section 89-103.2, the department may" for "The board is empowered to" at the beginning of subsection (5); and made minor changes in phraseology.

89-116.1. Disposition of moneys received from sale of water. The outstanding water conservation revenue bonds issued for seventeen (17) major irrigation projects and purchased by the state shall be administered by the department for the benefit of the state general fund. All sums received from the sale of water through water purchase contracts or otherwise from the seventeen (17) irrigation projects, except those funds which are specifically collected for the operation and maintenance of the projects, and all other income or other benefits arising from, out of, or in connection with the ownership of the projects from whatever source derived shall be deposited in the state general fund, to be applied on the retirement of the bonds and any advances or other indebtedness made for the benefit of the seventeen (17) projects by the department.

History: En. Sec. 1, Ch. 148, L. 1951; amd. Sec. 78, Ch. 147, L. 1963; amd. Sec. 130, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board" in two instances; and made minor changes in phraseology and punctuation.

89-117. (349.14) Contracts with the United States. The department may enter into contracts and leases with the United States, its instrumentalities or agencies, for the purpose of financing the construction of any works authorized by this act, and may in those contracts or leases authorize the United States, its instrumentalities or agencies, to supervise and approve the construction, maintenance and operation of the works, or any project or portion thereof, until such times as any money expended, advanced or loaned by said United States, its instrumentalities or agencies, and agreed to be repaid thereto by the department, is fully repaid. It is the purpose and intent of this act that the department may accept co-operation from the United States, its instrumentalities and agencies, in the construction, maintenance and operation and in financing the construction, of any works authorized by this act, and the department may do all things necessary in order to avail itself of that aid, assistance and co-operation under federal legislation now or hereafter enacted by Congress.

History: En. Sec. 13, Ch. 35, Ex. L. 1933; amd. Sec. 131, Ch. 253, L. 1974.

Amendments

The 1974 amendment deleted "Notwith-

standing any provisions of this act to the contrary" at the beginning of the section; substituted "department" for "board" throughout the section; and made minor changes in phraseology.

89-118. (349.15) Powers and duties of department—actions at law.
 (1) The department shall keep full and complete accounts concerning all matters and things relating to the works and annually shall prepare balance sheets and income and profit and loss statements showing the financial condition of each project, and file copies thereof with the secretary of state. All books and papers pertaining to all matters provided for in this act shall at all reasonable times be open to the inspection of any party interested or any citizen of the state. Except as otherwise provided in this act, the department has full charge and control of the construction, operation and maintenance of the works and the collection of all rates, charges and revenues of whatsoever character therefrom. The department shall proceed immediately with the construction of the works upon funds being made available therefor and shall prosecute the works to completion as rapidly as possible. The department, with the approval of the board, may sell, lease and otherwise dispose of all waters which may be impounded under this act, and the water may be sold for the purpose of irrigation, development of power, watering of stock or any other purpose. To the extent that it may be necessary to carry out this act, and subject to a compliance with the other provisions of this act, the department has full control of all the water of the state not under the exclusive control of the United States and not vested in private ownership, and it shall take such steps as **may be necessary** to appropriate and conserve the same for the use of the people.

(2) The department may institute in any court any actions, suits, and special proceedings necessary to enable it to acquire, own, and hold title to lands for dam sites, reservoir sites, water rights, rights of way for diversion and distributing canals, and lateral ditches, and other means of distribution of water, and may also in any court institute, maintain, and prosecute to final determination actions, suits and special proceedings

necessary to have the water rights adjudicated upon any stream or source of water supply from which is derived the water for the reservoir, diversion and distributing canals, lateral ditches and other means of distribution of the water. The department may join owners of waters appropriated by a person, association or corporation from the streams of the state, so that adjudication may be had of all surplus water upon all the streams and sources of water supply of a project constructed by the department. All costs and expenses of the actions, suits or special proceedings shall be paid by the department out of funds provided under this act.

History: En. Sec. 14, Ch. 35, Ex. L. 1933; amd. Sec. 43, Ch. 177, L. 1965; amd. Sec. 132, Ch. 253, L. 1974.

Amendments

The 1965 amendment deleted from subsection (2) a second paragraph reading, "The vice-chairman of the board, who shall act as secretary and treasurer, shall furnish a bond in the form and to the amount that shall be required by said board."

The 1974 amendment substituted references to "department" for references to "board" throughout the section; inserted "with the approval of the board" near the beginning of the fifth sentence of subsection (1); and made minor changes in phraseology.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

89-119. (349.16) Actions by trustee and bondholders. Any holder of any bonds issued under this act or any of the coupons attached thereto, and the trustee, if any, except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may, either at law or in equity, by suit, action, mandamus or other proceeding, including proceedings for the appointment of a receiver, protect and enforce any and all rights granted hereunder or under the resolution or trust indenture and may enforce and compel performance of all duties required by this act or by the resolution or trust indenture to be performed by the board or the department. While any bonds issued by the board remain outstanding the powers, duties or existence of the board or any official or agency of the state shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of the bonds.

History: En. Sec. 15, Ch. 35, Ex. L. 1933; amd. Sec. 133, Ch. 253, L. 1974.

Amendments

The 1974 amendment added "or the department" to the first sentence; and made minor changes in phraseology.

89-120. (349.17) Limitation of liability—receipt of contributions and appropriations authorized. (1) No liability or obligation shall be incurred under this act beyond the extent to which money is provided under this act. All public or private property damaged or destroyed in carrying out the powers granted under this act shall be restored or repaired and placed in their original condition, as nearly as practicable, or adequate compensation made therefor out of funds provided by this act.

(2) The department may receive and accept appropriations and contributions from any source of either money or property or other things of value, to be held, used, and applied for the purposes in this act.

History: En. Sec. 16, Ch. 35, Ex. L. 1933; amd. Sec. 79, Ch. 147, L. 1963; amd. Sec. 134, Ch. 253, L. 1974.

Amendments

The 1974 amendment inserted the sub-

section designations; substituted "department" for "board" at the beginning of subsection (2); and made minor changes in phraseology.

89-121 to 89-123. (349.18 to 349.20) Repealed.

Repeal

Sections 89-121 to 89-123 (Secs. 17 to 19, Ch. 35, Ex. L. 1933; Sec. 1, Ch. 214, L.

1963), relating to appropriation of water by the board, were repealed by Sec. 46, Ch. 452, Laws 1973.

89-124. (349.21) Conformity to federal regulations authorized. For the purpose of obtaining financial aid from the United States of America, the department may adjust the plans and operation of a project, created under this act, to conform to the laws and regulations of the federal government and the supervision of any agency constituted under that authority, and may exercise those powers whenever conferred.

History: En. Sec. 20, Ch. 35, Ex. L. 1933; amd. Sec. 135, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board"; and made minor changes in phraseology.

89-125. (349.22) Powers of department concerning waters and appropriations thereof. (1) The authority of the department conferred by this act extends and applies to rights to the natural flow of the waters of this state which it may acquire, with the approval of the board, by condemnation, purchase, exchange, appropriation or agreement.

(2) For the purpose of regulating the diversion of those waters, the department may enter upon the means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

(3) The department may take into consideration the decrees of the courts of this state having jurisdiction, which purport to adjudicate the waters of a stream or its tributaries, and a fair, reasonable, equitable reconciliation shall be made between the claimants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not adjudicated by any court.

(4) The department, at its discretion, may hold hearings relating to the rights of respective claimants after first giving such notice as it deems appropriate, and make findings of the date and quantity of appropriation and use of all claimants which the department will recognize and observe in diverting the waters which it owns. The department may police and distribute to the owner of the recognized appropriation the waters due him upon request and under terms agreed upon.

(5) The department, when engaged in controlling and dividing the natural flow of a stream under the authority granted by this act, is exercising a police power of the state, and water commissioners appointed by any court may not deprive the department of any of the waters owned or administered under agreement with respective owners, but the owner of a prior right contending that the department is not recognizing and re-

specting the appropriation may resort to a court for the purpose of determining whether or not the rights of the claimant have been invaded, and the department shall observe the terms of the final decree.

(6) When the department impounds or acquires the right of appropriation of the waters of a stream, it may divert or authorize the diversion at any point on the stream, or any portion thereof, when it is done without injury to a prior appropriator.

(7) This act does not repeal or amend an existing statute pertaining to the appropriation or use of water except as expressly provided in this act, and this act does not interfere with vested rights to the use of water.

History: En. Sec. 21, Ch. 35, Ex. L. 1933; amd. Sec. 136, Ch. 253, L. 1974.

Amendments

The 1974 amendment inserted the sub-

section designations; substituted "department" for "board" throughout the section; inserted "with the approval of the board" after "acquire" in subsection (1); and made minor changes in phraseology.

89-126. (349.23) Repealed.

Repeal

Section 89-126 (Sec. 5, Ch. 95, L. 1935), providing that the water conservation

board was a body corporate and politic and an agency of the state, was repealed by Sec. 108, Ch. 253, Laws of 1974.

89-127. (349.24) Sale or disposal of waters—disposal of waterworks systems, provision for. In addition to the powers conferred upon the department to sell, lease, or otherwise dispose of waters for the purpose of irrigation, development of power, watering of stock, or other purposes, the department, with the approval of the board, may sell, lease, or otherwise dispose of waters from its waterworks systems for public, domestic, industrial and other uses and for fire protection. The department may sell or otherwise dispose of a waterworks system which is not operated for the purpose of irrigation or development of power, after the discharge of all of the bonds issued by the board to finance the construction or acquisition thereof and of all interest thereon and costs and expenses incurred in connection with any action or proceeding by or on behalf of the holders of the bonds; however, no such sale or other disposition may be made except to a municipality, political subdivision, authority or other public body of the state.

History: En. Sec. 6, Ch. 95, L. 1935; amd. Sec. 137, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to "department" for references to "board"; inserted "with the approval of the board" in the first sentence; and made minor changes in phraseology.

89-129 to 89-132. (349.26 to 349.29) Repealed.

Repeal

Sections 89-129 to 89-132 (Secs. 1 to 4, Ch. 96, L. 1935), relating to rehabilitation of agriculture, trade and industry and relief

of unemployment through public works programs and otherwise, were repealed by Sec. 108, Ch. 253, Laws of 1974.

89-132.1. State water plan. The department shall:

(1) Gather from any source reliable information relating to Montana's water resources, and prepare therefrom a continuing comprehensive in-

ventory of the water resources of the state. In preparing this inventory, the department may conduct studies, adopt studies made by other competent water resource groups including federal, regional, state or private agencies, perform research or employ other competent agencies to perform research on a contract basis, and hold public hearings in affected areas at which all interested parties shall be given an opportunity to appear.

(2) Formulate and with the approval of the board, adopt, and from time to time amend, extend or add to, a comprehensive, co-ordinated multiple-use water resources plan, known as the "state water plan." The state water plan may be formulated and adopted in sections, these sections corresponding with hydrologic divisions of the state. The state water plan shall set out a progressive program for the conservation, development and utilization of the state's water resources, propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses. Before adoption of the state water plan, or any section thereof, the department shall hold public hearings in the state, or in an area of the state encompassed by a section thereof if adoption of a section is proposed. Notice of the hearing or hearings shall be published for two (2) consecutive weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section thereof at least thirty (30) days prior to the hearing.

(3) Submit to each general session of the legislature the state water plan or any section thereof or amendments, additions or revisions thereto which the department has formulated and adopted.

(4) Prepare a continuing inventory of the ground-water resources of the state. The ground-water inventory shall be included in the comprehensive water resources inventory described in subsection (1) above, but shall be a separate component thereof.

(5) Publish the comprehensive inventory, the state water plan, the ground-water inventory, or any part of each, and the department may assess and collect a reasonable charge for these publications.

(6) The board may adopt rules necessary to effect the purposes of this act.

History: En. Sec. 5, Ch. 158, L. 1967; amd. Sec. 138, Ch. 253, L. 1974.

Amendments

The 1974 amendment rewrote the introductory clause which read: "In addition to any other power or duty authorized or imposed by provisions of this code, the board shall be empowered, and a duty is

hereby enjoined thereon, to"; substituted "department" for "board" throughout the section; inserted "with the approval of the board" near the beginning of subdivision (2); inserted "The board" at the beginning of subdivision (6); and made minor changes in phraseology and punctuation.

89-133 to 89-139. (349.30 to 349.36) Repealed.

Repeal

Sections 89-133 to 89-139 (Secs. 5 to 10, Ch. 96, L. 1935; Sec. 1, Ch. 97, L. 1935), relating to utilization of state and local officers by the federal government, co-operation with the board by state offi-

cers, execution of instruments by the board, issuance of revenue bonds, supplemental nature of powers conferred by the act and the purpose and construction of the act, were repealed by Sec. 108, Ch. 253, Laws of 1974.

89-140. (349.37) State agencies and counties may contract with department. A state agency or the boards of county commissioners having jurisdiction over any lands which may require the use of any water or water rights owned or controlled by the department or the United States or its agencies, may enter into such contracts as are necessary with the department, the United States, or agencies of the United States, or others, for the purchase of water or water rights needed for those lands, and may enter into any contracts as necessary or expedient, similar to contracts executed by individuals or others, to secure for the state, state institutions, counties and state school and county lands the benefits of the water or water rights, which obligations may be similar to those of persons who become stockholders in corporations or who may agree to purchase and pay for water for irrigation purposes. These contracts may include agreements that the state and counties shall be subject to the same charges and payments as are other water users within the projects; however, none of those charges, payments or costs shall constitute a lien against the state's interest in the lands.

History: En. Sec. 2, Ch. 97, L. 1935; amd. Sec. 139, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "A state agency or the" at the beginning of the section for "The state land board

and/or the state board of examiners and/or the state board of education or any other board or agency of the state of Montana and/or"; substituted "department" for "state water conservation board" in two instances; and made minor changes in phraseology and punctuation.

89-142. Department of natural resources and conservation authorized to negotiate with other states regarding interstate waters. The department of natural resources and conservation may negotiate with the duly constituted authorities or agencies of other states and of the United States in the preparation of interstate compacts or agreements governing the use, distribution and allocation of the water of any stream or streams flowing from Montana into such other states or flowing from such other states into Montana. It shall co-operate with other states and with the United States in making the necessary studies and obtaining the data necessary to the preparation of the compacts. This authority and the duties hereby imposed are limited to the preparation and proposal of the compact and the compact or agreement is not binding upon the state of Montana until approved by the legislature of Montana and the legislatures of the other state or states involved in the compact.

History: En. Sec. 1, Ch. 27, Ex. L. 1933; amd. Sec. 2, Ch. 280, L. 1965; Sec. 81-2009, R. C. M. 1947; amd. and redes. 89-142 by Sec. 112, Ch. 253, L. 1974.

Amendments

The 1974 amendment redesignated the

section; substituted "The department of natural resources and conservation may" at the beginning of the section for "The state water conservation board is hereby authorized and empowered to"; and made minor changes in phraseology.

CHAPTER 3—WEATHER MODIFICATION ACTIVITIES

Section 89-310. Definitions.

89-312. Acquisition of property—acceptance and expenditure of funds—research and development authority.

89-312.1. Standards for research in weather modification control.

- 89-313. License and permit required for weather modification and control.
- 89-314. Department to review applications—exemptions.
- 89-315. Issuance of license—qualifications of licensees.
- 89-316. Term of license—renewal.
- 89-317. License fee.
- 89-318. Issuance of permits—requirements for permit—hearing.
- 89-319. Separate permit for each operation.
- 89-320. Notice of intention to apply for permit—activities limited by terms of permit.
- 89-321. Contents of notice of intention.
- 89-322. Publication of notice of intention.
- 89-323. Proof of financial responsibility by applicant.
- 89-324. Permit fee—time of payment.
- 89-325. Account in agency fund—fees used to pay expenses.
- 89-326. Records of operations maintained by licensees.
- 89-327. Reports of operations.
- 89-328. Records and reports open to public.
- 89-329. Termination of licenses and permits by board.
- 89-330. State and agents not liable for acts of private persons.
- 89-331. Violation as misdemeanor—continuing violations.

89-301 to 89-309. (349.54 to 349.62) Repealed.

Repeal

These sections (Secs. 1 to 9, Ch. 176, L. 1935), relating to development of state

resources by the state planning board, were repealed by Sec. 10, Ch. 19, Laws 1967.

89-310. Definitions. Unless the context requires otherwise, in this chapter:

(1) “Weather modification and control” means changing or controlling, or attempting to change or control, by artificial methods, the natural development of atmospheric cloud forms or precipitation forms which occur in the troposphere.

(2) “Research and development” means theoretical analysis, exploration and experimentation, and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(3) “Department” means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(4) “Board” means the board of natural resources and conservation provided for in section 82A-1509.

History: En. Sec. 1, Ch. 20, L. 1967; amd. Sec. 1, Ch. 368, L. 1973; amd. Sec. 140, Ch. 253, L. 1974.

Title of Act

An act to control weather modification activities and designating the state water conservation board as the agency to administer this act.

Amendments

The 1973 amendment divided the former language into the preliminary clause and subdivision (1); and added subdivisions (2) and (3).

The 1974 amendment added subdivision (4); and made minor changes in punctuation and phraseology.

89-311. Repealed.

Repeal

Section 89-311 (Sec. 2, Ch. 20, L. 1967), relating to responsibility of water resources board for administration of act

and to reimbursement of board members for expenses, was repealed by Sec. 108, Ch. 253, L. 1974.

89-312. Acquisition of property—acceptance and expenditure of funds—research and development authority. In addition to any other acts authorized by law the department may:

(1) acquire materials, equipment and facilities as are necessary to perform its duties under this act;

(2) receive any funds which may be offered or become available from federal grants or appropriations, private gifts, donations, bequests, or any other source and unless their use is restricted, may expend the funds for the administration of this act;

(3) make such studies and investigations, and obtain such information as the department may deem necessary in exercising its authority in the administration or enforcement of this act;

(4) co-operate with public or private agencies in the performance of the department's functions or duties and in furtherance of the purposes of this act;

(5) represent the state in any and all matters pertaining to plans, procedures or negotiations for interstate compacts relating to weather modification and control;

(6) enter into co-operative agreements with the United States government or any of its agencies, or with the various counties and cities of this state or with any private or public agencies for conducting weather modification or cloud seeding operations;

(7) act for and represent the state and the counties, cities and private or public agencies in contracting with private concerns for the performance of weather modifications or cloud seeding operations; and

(8) conduct and may make arrangements including contracts and agreements for the conduct of, research and development activities relating to:

(a) the identification and evaluation of meteorological, environmental, ecological, agricultural, economic, hydrological and sociological impacts of weather modification in Montana;

(b) the theory and development of methods of weather modification and control, including processes, materials and devices relating thereto;

(c) the utilization of weather modification and control for agricultural, industrial, commercial, recreational and other purposes;

(d) the protection of life and property during research and operational activities.

History: En. Sec. 3, Ch. 20, L. 1967; amd. Sec. 2, Ch. 368, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in the preliminary

clause; deleted subdivision (1), which authorized the establishment of advisory committees; renumbered subdivisions (2) and (3) as (1) and (2); and added subdivisions (3) through (8).

89-312.1. Standards for research in weather modification control. The board may establish by rule standards and instructions to govern the carrying out of research and development or projects in weather modifica-

tion and control as it deems necessary or desirable to minimize danger to health, safety, welfare or property.

History: En. Sec. 3, Ch. 368, L. 1973; amd. Sec. 141, Ch. 253, L. 1974.

scope of weather modification by authorizing more extensive research and development of weather modification.

Title of Act

An act amending sections 89-310, 89-312, 89-314 and 89-318, R. C. M. 1947; adding new provisions broadening the

Amendments

The 1974 amendment substituted "board" for "department."

89-313. License and permit required for weather modification and control. No person shall engage in activities for weather modification and control except under, and in accordance with, a license and a permit issued by the board authorizing such activities.

History: En. Sec. 4, Ch. 20, L. 1967.

89-314. Department to review applications—exemptions. The department shall review all applications for weather modification activities, and the board may provide by rule for exempting from the license and permit requirements of this act:

(1) research, development, and experiments by state and federal agencies, institutions of higher learning and bona fide nonprofit research organizations and their agents;

(2) laboratory research and experiments;

(3) activities of an emergency character for protection against fire, frost, sleet, or fog; and

(4) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail.

History: En. Sec. 5, Ch. 20, L. 1967; amd. Sec. 4, Ch. 368, L. 1973; amd. Sec. 142, Ch. 253, L. 1974.

end of the preliminary clause; and made minor changes in style.

The 1974 amendment substituted "department" for "board" at the beginning of the section; inserted "the board" in the introductory paragraph; and made minor changes in phraseology and punctuation.

Amendments

The 1973 amendment substituted "requirements of this act" for "fees" at the

89-315. Issuance of license—qualifications of licensees. The license to engage in activities for weather modification and control shall be issued, in accordance with procedures and subject to conditions the board may by rule establish to effectuate the provisions of this act, to applicants who demonstrate competence in the field of meteorology to the satisfaction of the board. If the applicant is an organization, these requirements must be met by the individual who will be in charge of the operation for the applicant.

History: En. Sec. 6, Ch. 20, L. 1967.

89-316. Term of license—renewal. The license shall be issued for a period to expire at the end of the calendar year in which it is issued and, if the licensee possesses the qualifications necessary for the issuance of a new license, shall upon application be renewed at the expiration of the period.

History: En. Sec. 7, Ch. 20, L. 1967.

89-317. License fee. A license shall be issued or renewed only upon the payment to the department of one hundred dollars (\$100) for the license or renewal.

History: En. Sec. 8, Ch. 20, L. 1967;
amd. Sec. 143, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board."

89-318. Issuance of permits—requirements for permit—hearing. (1) The permits shall be issued in accordance with procedures and subject to conditions the board may by rule establish to effectuate this chapter, only:

- (a) if the applicant is licensed pursuant to this chapter;
- (b) if sufficient notice of intention is published and proof of publication is filed as required in section 89-322;
- (c) if an applicant furnishes proof of financial responsibility in an amount to be determined by the board as required in section 89-323;
- (d) if the fee for the permit is paid as required in section 89-324;
- (e) if the weather modification and control activities to be conducted are determined by the board to be for the general welfare and the public good.

(2) The department shall hold a public hearing in the area to be affected by the issuance of the permit, if the board determines that a hearing is necessary. The department may in its discretion assess the permit applicant for the costs incurred by the department in holding the hearing.

History: En. Sec. 9, Ch. 20, L. 1967;
amd. Sec. 1, Ch. 214, L. 1973; amd. Sec.
5, Ch. 368, L. 1973; amd. Sec. 144, Ch. 253,
L. 1974.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 214 and once by Ch. 368. The amendatory acts appear to be in conflict as to the first sentence in subsection (2). Since chapter 368 is the later of the two enactments, the language of that amendment is shown above. Other provisions of the amendments do not appear to conflict and the compiler has made a composite section embodying the changes made by both amendments in the nonconflicting provisions.

Amendments

Chapter 214, Laws of 1973, designated the language in the former section as subsection (1); substituted letter designations (a) to (e) in subsection (1) for numeral designations (1) to (5); inserted "of natural resources and conservation" after "board" in the preliminary paragraph of subsection (1); substituted a new subsection (2) for a subdivision (6) reading "if the board has held an open hearing in the area to be affected as to such issue"; and made minor changes in style.

As enacted by Ch. 214, the first sentence of subsection (2) read: "The department of natural resources and conservation shall hold a public hearing in the area to be affected by the issuance of the permit, if the board determines that a hearing is necessary."

Chapter 368, Laws of 1973, substituted the first sentence of subsection (2) for the former subdivision (6) quoted above.

The 1974 amendment substituted "this chapter" for "this act" in subsection (1) and subdivision (1)(a); deleted "of this act" at the end of subdivisions (1)(b), (1)(c) and (1)(d); substituted "The department shall hold a public hearing" for "A public hearing may be held" and substituted "board" for "department" in the first sentence of subsection (2); inserted "in its discretion" in the second sentence of subsection (2); and made minor changes in phraseology and punctuation.

Effective Date

Section 2 of Ch. 214, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

89-319. Separate permit for each operation. "Operation" means the performance of weather modification and control activities entered into

for the purpose of producing or attempting to produce, a certain modifying effect within one (1) geographical area over one continuing time interval not exceeding one (1) year.

History: En. Sec. 10, Ch. 20, L. 1967.

89-320. Notice of intention to apply for permit—activities limited by terms of permit. Before undertaking any weather modification and control activities, the applicant for a permit shall file with the department, and also have published, a notice of intention. If a permit is issued, the holder of the permit shall confine his activities to the time and area limits set forth in the notice of intention, unless modified by the board. His activities shall conform to any conditions imposed by the board. The permit may not be sold or transferred.

History: En. Sec. 11, Ch. 20, L. 1967;
amd. Sec. 145, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted “department” for “board”; and made a minor change in phraseology.

89-321. Contents of notice of intention. The notice of intention shall set forth at least the following:

- (1) the name and address of the applicant;
- (2) the nature, purpose, and objective of the intended operation and the person or organization on whose behalf it is to be conducted;
- (3) the area in which, and the approximate time during which, the operation will be conducted;
- (4) the area which is intended to be affected by the operation;
- (5) the materials and methods to be used in conducting the operation.

History: En. Sec. 12, Ch. 20, L. 1967.

89-322. Publication of notice of intention. (1) The applicant shall have notice of intention, or that portion thereof including the items specified in section 89-321, published at least once a week for two (2) consecutive weeks in a newspaper having a general circulation and published within any county in which the operation is to be conducted and in which the affected area is located, or, if the operation is to be conducted in more than one (1) county or if the affected area is located in more than one (1) county or is located in a county other than the one in which the operation is to be conducted, then in newspapers having a general circulation and published within each of the counties.

(2) Proof of publication, made in the manner provided by law, shall be filed by the applicant with the department sooner than the sixteenth day after the date of the last publication of the notice.

History: En. Sec. 12, Ch. 20, L. 1967;
amd. Sec. 146, Ch. 253, L. 1974.

tion 89-321” for “section 12 of this act” in subsection (1); and substituted “department” for “board” in subsection (2).

Amendments

The 1974 amendment substituted “sec-

89-323. Proof of financial responsibility by applicant. Proof of financial responsibility may be furnished by an applicant by his showing, to the

satisfaction of the board, ability to respond in damages for liability which might reasonably be attached to, or result from, his weather modification and control activities.

History: En. Sec. 14, Ch. 20, L. 1967.

89-324. Permit fee—time of payment. The fee to be paid by each applicant for a permit shall be equivalent to one per cent (1%) of the estimated cost of such operation, the estimated cost to be computed by the department from the evidence available to it. The fee is due and payable to the department as of the date of issuance of the permit by the board; however, if the applicant is able to give satisfactory security for the payment of the balance he may be permitted to commence the operation, and a permit may be issued therefor, upon the payment of not less than fifty per cent (50%) of the fee. The balance due shall be paid within three (3) months from the date of termination of the operation as prescribed in the permit.

History: En. Sec. 15, Ch. 20, L. 1967; amd. Sec. 1, Ch. 151, L. 1969; amd. Sec. 147, Ch. 253, L. 1974.

Amendments

The 1969 amendment substituted "one per cent (1%)" for "one and one-half per cent (1½%)" in the first sentence.

The 1974 amendment substituted "department" for "board" in the first two sentences; and inserted "by the board" after "issuance of the permit" in the second sentence.

89-325. Account in agency fund—fees used to pay expenses. There is established an account in the agency fund to be known as the "weather modification account." All license and permit fees paid to the department shall be deposited in this account and used to pay the expenses of administering this act.

History: En. Sec. 16, Ch. 20, L. 1967; amd. Sec. 148, Ch. 253, L. 1974.

Amendments

The 1974 amendment changed the name

of the account from "weather modification board account" to "weather modification account"; and substituted "department" for "board."

89-326. Records of operations maintained by licensees. Every licensee shall keep and maintain a record of all operations conducted by him under his license and each permit, showing:

- (1) The method employed;
- (2) Type of equipment used;
- (3) Kinds and amounts of material used;
- (4) Times and places of operation of the equipment;
- (5) Names and addresses of all individuals participating or assisting in the operation;
- (6) Any other general information as the department may require.

History: En. Sec. 17, Ch. 20, L. 1967; amd. Sec. 149, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board" in subdivision (6); and made minor changes in style.

89-327. Reports of operations. The department shall require written reports, in a manner as it provides, of each operation for which a permit is issued. The department shall also require reports from any organization that is exempt from license and permit requirements as provided in section 89-314.

History: En. Sec. 18, Ch. 20, L. 1967; amd. Sec. 150, Ch. 253, L. 1974. department" for "board" at the beginning of each sentence; and substituted "section 89-314" for "section 5 of this act."

Amendments

The 1974 amendment substituted "de-

89-328. Records and reports open to public. The records and reports in the custody of the department shall be open for public examination.

History: En. Sec. 19, Ch. 20, L. 1967; amd. Sec. 151, Ch. 253, L. 1974. **Amendments**
The 1974 amendment substituted "department" for "board."

89-329. Termination of licenses and permits by board. After notice to the licensee and a reasonable opportunity for a hearing, the board may modify, suspend, revoke, or refuse to renew, any license or permit issued if it appears that the licensee no longer possesses the qualifications necessary or if it appears that the licensee has violated any of the provisions of this act; or in the case of a modification, that it is necessary for the protection of the health or the property of any person.

History: En. Sec. 20, Ch. 20, L. 1967.

89-330. State and agents not liable for acts of private persons. Nothing in this act shall be construed to impose or accept any liability or responsibility on the part of the state, the board, the department or any state officials or employees for any weather modification and control activities of any private person or group.

History: En. Sec. 21, Ch. 20, L. 1967; amd. Sec. 152, Ch. 253, L. 1974. **Amendments**
The 1974 amendment inserted "the department."

89-331. Violation as misdemeanor—continuing violations. A person violating any provision of this act is guilty of a misdemeanor, and a continuing violation is punishable as a separate offense for each day during which it occurs.

History: En. Sec. 22, Ch. 20, L. 1967.

Separability Clause

Section 23 of Ch. 20, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid

parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 4—WATER CONSERVATION MONEYS

Section 89-401. Disposition of moneys collected.

89-402. Payment of expenses.

89-401. (349.63) Disposition of moneys collected. For the purpose of carrying out the provisions of the Water Conservation Act, acts

amendatory thereto and supplementary thereof, and such other water resource authority, powers and duties as are conferred upon the department of natural resources and conservation by law, the following moneys shall be deposited in the earmarked revenue fund for the use of the department: all sums of money donated or contributed by the federal government or any department or agencies thereof; all gifts, donations, bequests and devises made to the state therefor; and proceeds of the sale thereof; the proceeds of the sale or redemption of and the interest earned by the securities purchased or acquired by the moneys thereof; all reimbursements for money advanced for the payment of the assessments upon state, school granted and other public lands for the improvement thereof as provided by law; all reimbursements for money advanced for the investigation and survey of reclamation, electrification and rehabilitation systems or projects proposed to be financed in whole or in part by the reclamation of lands and dyking, drainage, and dyking and drainage dams for conservation of water to be used in reclamation of land or stock reservoirs or for the construction, maintenance and operation of plants or projects for the manufacture or distribution of electric current; revenues arising from projects constructed or owned by the department in excess of costs of operation and maintenance, and repayment of principal and interest of any moneys borrowed for the construction of the projects; all sums payable as rentals due for water use, maintenance or operation upon any project owned by the state or for which such rentals are due and payable under any contract or agreement made by any person, association or corporation with the department; all sums of money received by the department for the use of electric current, in excess of the maintenance and operation upon any electrification system or project; all reimbursements for costs of surveys and investigations for moneys advanced to counties, cities or towns or their proportion of the cost thereof, or from any other sources.

History: En. Sec. 1, Ch. 169, L. 1935; amd. Sec. 241, Ch. 147, L. 1963; amd. Sec. 153, Ch. 253, L. 1974.

Amendments

The 1974 amendment inserted "water re-

source" before "authority, powers and duties" near the beginning of the section; substituted references to "department of natural resources and conservation" for references to "water conservation board"; and made minor changes in phraseology.

89-402. (349.64) Payment of expenses. From the moneys of the department in the earmarked revenue fund there shall be paid, upon vouchers approved by it, such sums as are found to be necessary or expedient for the investigation and survey of unreclaimed and undeveloped lands, to determine the relative agricultural value, productiveness, uses and feasibility and cost of the reclamation and development thereof; for the investigation and survey of electrification and rehabilitation systems and projects proposed to be financed in whole or in part by the department; such amounts as may be authorized by the department for the reclamation of lands by dyking, drainage, dyking and drainage and irrigation districts duly and regularly organized under the laws of this state and such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands; such

amounts as may be authorized by the department for the construction, maintenance and operation of dams and dykes for the conservation of water for reclamation projects or stock reservoirs, and purchase of rights of way and other costs preliminary to construction of reclamation, stock reservoirs, electrification or rehabilitation systems or projects authorized under the Water Conservation Act or acts amendatory thereof or supplemental thereto, provided that whenever deemed practical the department may employ county surveyors in the assistance and preparation of surveys and investigations conducted by the department.

History: En. Sec. 2, Ch. 169, L. 1935; amd. Sec. 80, Ch. 147, L. 1963; amd. Sec. 154, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to "department" for references to "board"; and substituted "vouchers approved by it" near the beginning of the section for "vouchers approved by the board, attested by the secretary."

CHAPTER 6—PUBLIC DOCKS AND WHARVES

89-605. (1609) Jurisdiction of public service commission.

Compiler's Notes

Section 21, Ch. 315, Laws 1974, substi-

tuted "public service commission" in this section for "railroad commission."

CHAPTER 7—DAMS AND RESERVOIRS—CONSTRUCTION AND EXAMINATION OF

Section 89-702. Dams and dikes to be constructed in a secure manner—proceedings upon complaint of insecurity.

89-702.1. Jurisdiction of department.

89-702. (2659) Dams and dikes to be constructed in a secure manner—proceedings upon complaint of insecurity. (1) A person, association, or corporation may not construct, or cause to be constructed, a dam or dike for the purpose of accumulating, storing, appropriating, or diverting any of the waters of this state, except in a thorough, secure, and substantial manner.

(2) The department of natural resources and conservation may at any time on its own motion, and it shall, upon complaint on oath being made to the department by three (3) or more persons residing or having property in such location, that their homes or property would be in danger of destruction or damage in event of flood occurring on account of the breaking of any dam or dike of any reservoir within the state, and that they have reason to believe said reservoir is in an unsafe condition, or that it is being filled with water to such an extent as to render it unsafe, immediately examine, or cause to be examined, the reservoir. If, upon the examination, the department finds that the reservoir is unsafe, or is being filled with water to such an extent as to render it unsafe, it shall notify the county attorney of the county in which the reservoir is located, setting forth its findings, and the county attorney shall immediately take the necessary steps to abate the danger and make the structure safe.

(3) If either party is dissatisfied with the findings of the department, it may appeal to the district court of the district wherein the reservoir

is located, and the court shall hear and determine the matter at the earliest practical time, subject to the right of either party to appeal as in other civil cases; however, the judgment of the department shall control until the final determination of the case.

History: Sec. 2139, Rev. C. 1907; amd. Sec. 1, Ch. 168, L. 1917; re-en. Sec. 2659, R. C. M. 1921; amd. Sec. 5, Ch. 280, L. 1965; amd. Sec. 1, Ch. 370, L. 1971; amd. Sec. 1, Ch. 209, L. 1973.

Amendments

The 1965 amendment substituted "state water conservation board" for "state engineer" in five places; and made minor changes in phraseology.

The 1971 amendment inserted "The Montana water resources board, at any time, on its own motion or" in the beginning of the second paragraph; and sub-

stituted "state water resources board" for "state water conservation board" in five places.

The 1973 amendment divided the former section into three subsections; substituted references to the department of natural resources and conservation for references to the water resources board in subsection (2); inserted "may" following "department of natural resources and conservation"; inserted "and it shall" before "upon complaint" near the beginning of subsection (2); and made minor changes in style and phraseology.

89-702.1. Jurisdiction of department. Jurisdiction of the department under section 89-702 applies to any dam or dike which does or will impound or divert water, and which:

(1) has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre feet or more; or,

(2) is twenty-five (25) feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the dam or dike, or from the lowest elevation of the outside limit of the dam or dike, if it is not across a stream channel or watercourse, to the maximum storage elevation.

History: En. Sec. 2, Ch. 370, L. 1971; amd. Sec. 2, Ch. 209, L. 1973.

Title of Act

An act to allow the Montana water resources board, upon its own motion, to inspect and determine safety of dams or dikes; amending section 89-702, R. C. M., 1947.

Amendments

The 1973 amendment substituted "department under section 89-702" for "water resources board"; divided the former section into the preliminary clause and the present subdivision (1); inserted "maximum" in subdivision (1); reduced the capacity specified in subdivision (1) from 100 to 50 acre-feet; and added subdivision (2).

CHAPTER 8—WATER RIGHTS—APPROPRIATION AND ADJUDICATION

- Section 89-806. Diversion of natural flow of waters, when permitted.
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- 89-898. Entry on land—inspections.
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- 89-8-100. Hearings before board—Administrative Procedure Act.
- 89-8-101. Penalties.
- 89-8-102. Deposit of fees and penalties.
- 89-8-103. Statement of legislative findings and policy.
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- 89-8-105. Suspension of action.
- 89-8-106. When department may suspend action.
- 89-8-107. Reservations.
- 89-8-108. Application of act.
- 89-8-109. Utility facilities.
- 89-8-110. Certain changes of use allowed.
- 89-8-111. Severability.

89-801 to 89-801.2, 89-802 to 89-804. (7093 to 7096) Repealed.

Repeal

Sections 89-801 to 89-801.2, 89-802 to 89-804 (Secs. 1 to 4, pp. 130, 131, L. 1885; Sec. 1, p. 152, L. 1901; Secs. 1, 2, Ch. 228, L. 1921; Secs. 1 to 3, Ch. 345,

L. 1969), relating to right to appropriate water, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-880, 89-891 and 89-892.

89-806. Diversion of natural flow of waters, when permitted. Any person, persons, association or corporation, owning or in possession of lands susceptible of irrigation from any stream, the waters of which are so diminished by prior appropriations that a sufficient amount of water for the irrigation of their lands cannot be obtained from the natural flow of the stream, who shall construct a reservoir, or shall purchase or lease water from a reservoir owned by the department of natural resources and conservation, or another, or shall otherwise acquire an interest in such reservoir, or in water stored therein, which is so located that because of natural or other obstacles the water impounded therein cannot be conducted to the lands which they desire to irrigate, may, provided the stored water can be discharged into the stream in such a manner that it can be used beneficially by prior appropriators, divert the natural flow of the stream for the irrigation of their lands in lieu of an equal amount of stored water, provided, however, that such exchange can be made without injury to said prior appropriators.

History: En. Sec. 1, Ch. 39, L. 1937; amd. Sec. 155, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department of natural resources and conservation" for "state water conservation board of the state of Montana."

Lawful Exchange

Owners of rights in canal who, because of the topography of the area, could not transport water from canal directly to their land, properly diverted the natural flow of creek for use on their land and replaced the water with water from the canal which intersected with stream below point of diversion. *Thompson v. Harvey*, — M —, 519 P 2d 963.

89-807 to 89-816. (7098 to 7106) Repealed.

Repeal

Sections 89-807 to 89-816 (Secs. 5 to 13, pp. 131 to 133, L. 1885; Sec. 1, Ch. 44, L. 1905; Sec. 3, Ch. 228, L. 1921; Sec. 1, Ch. 64, L. 1937; Sec. 6, Ch. 158, L. 1967),

relating to priority and recording of water appropriations, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-888 to 89-892.

89-820. (7110) Right to construct dams and raise water, etc.

Prescriptive Easement

This section has no application in case of prescriptive easement in water right since dominant tenement will not be re-

quired to pay for an easement acquired by prescription. *O'Connor v. Brodie*, 153 M 129, 454 P 2d 920.

89-821, 89-822. (7111, 7112) Repealed.

Repeal

These sections (Secs. 10, 11, p. 58, L. 1870), relating to ditches, dikes, flumes

and canals crossing highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

89-827, 89-828. (7117, 7118) Repealed.

Repeal

Sections 89-827 and 89-828 (Secs. 1901, 1902, Civ. C. 1895), forbidding the use of insecure dams and reservoirs and requir-

ing that they be constructed in a thorough, secure and substantial manner, were repealed by Sec. 108, Ch. 253, Laws of 1974.

89-829 to 89-842. (7119 to 7124.1, 7125 to 7131) Repealed.

Repeal

Sections 89-829 to 89-842 (Sec. 1, Ch. 95, L. 1905; Secs. 1 to 3, Ch. 185, L. 1907; Secs. 4 to 12, Ch. 228, L. 1921; Secs. 1, 2, Ch. 38, L. 1927; Sec. 1, Ch.

179, L. 1957), relating to appropriation of waters of adjudicated streams, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-880 to 89-888.

89-844, 89-845. (7133, 7134) Repealed.

Repeal

Sections 89-844, 89-845 (Sec. 1, Ch. 70, L. 1905; Sec. 12, Ch. 185, L. 1907), relating to the effect of a decree of water

rights and to the taking of ditches by eminent domain by the United States, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see sec. 89-877.

89-847 to 89-855. Repealed.

Repeal

Sections 89-847 to 89-855 (Secs. 1 to 9, Ch. 185, L. 1939; Secs. 6 to 9, Ch. 280, L. 1965), relating to adjudication of water

rights in streams, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-870 to 89-879.

89-857 to 89-864. Repealed.

Repeal

Sections 89-857 to 89-864 (Secs. 1 to

8, Ch. 114, L. 1957), relating to the use of natural channels of unadjudicated

streams for distribution of stored waters, 1973. For new law, see secs. 89-880 to were repealed by Sec. 46, Ch. 452, Laws 89-889.

89-865. Short title. This act shall be known and may be cited as the "Montana Water Use Act."

History: En. Sec. 1, Ch. 452, L. 1973. rights; repealing sections 89-121 through 89-123, 89-801 through 89-804, 89-807 through 89-816, 89-829 through 89-842, 89-844 and 89-845, 89-847 through 89-855, 89-857 through 89-864, 89-2912, 89-2913, 89-2919 through 89-2925, and 89-2935, R. C. M. 1947; amending sections 89-1001, 89-2911, 89-2915, 89-2917, and 89-2918, R. C. M. 1947.

Title of Act

An act providing a system for the appropriation and use of surface and groundwater; providing a procedure for the determination and confirmation of existing water rights; establishing a system of centralized records of all water

89-866. Declaration of policy and purpose. (1) Pursuant to article IX of the Montana constitution, the legislature declares that any use of water is a public use, and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided in this act.

(2) A purpose of this act is to implement article IX, section 3(4) of the Montana constitution, which requires that the legislature provide for the administration, control, and regulation of water rights and establish a system of centralized records of all water rights. The legislature declares that this system of centralized records recognizing and establishing all water rights is essential for the documentation, protection, preservation and future beneficial use and development of Montana's water for the state and its citizens, and for the continued development and completion of the comprehensive state water plan.

(3) It is the policy of this state and a purpose of this act to encourage the wise use of the state's water resources by making them available for appropriation consistent with this act, and to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems. In pursuit of this policy, the state encourages the development of facilities which store and conserve waters for beneficial use, for the maximization of the use of those waters in Montana, for the stabilization of stream flows, and for groundwater recharge.

(4) Pursuant to article IX, section 3(4) of the Montana constitution, it is further the policy of this state and a purpose of this act to recognize and confirm all existing rights to the use of any waters for any useful or beneficial purpose.

History: En. Sec. 2, Ch. 452, L. 1973.

89-867. Definitions. Unless the context requires otherwise, in this act:

(1) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including geothermal water.

(2) "Beneficial use" means a use of water for the benefit of the appropriator, other persons, or the public, including, but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal power, and recreational uses; provided, however, that a use of water for slurry to export coal from Montana is not a beneficial use. Slurry is a mixture of water and insoluble matter.

(3) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water, or in the case of a public agency to reserve water in accordance with section 89-890.

(4) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to the effective date of this act.

(5) "Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(6) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or through which it flows under natural pressures or is artificially withdrawn.

(7) "Permit" means the permit to appropriate issued by the department under sections 89-880 through 89-887.

(8) "Certificate" means the certificate of water right issued by the department under sections 89-879, 89-880 (4), and 89-888.

(9) "Declaration" means the declaration of an existing right filed with the department under section 89-872.

(10) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility, or the application of water to anything but a beneficial use.

(11) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, and the United States or any agency thereof.

(12) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(13) "Director" means the director of natural resources and conservation, a position provided for in section 82A-1510.

(14) "Board" means the board of natural resources and conservation provided for in section 82A-1509.

History: En. Sec. 3, Ch. 452, L. 1973;
amd. Sec. 1, Ch. 192, L. 1974.

Amendments

The 1974 amendment added the proviso to subdivision (2); and made minor changes in style.

Compiler's Notes

Section 82A-1510, cited in subdivision (13), was repealed by Sec. 108, Ch. 253, Laws of 1974.

89-868. Powers and duties of department. (1) The department shall:

(a) enforce and administer this act and rules adopted by the board under section 5 [89-869];

(b) prescribe procedures, forms, and requirements for applications, permits, certificates, declarations, and proceedings under this act, and prescribe the information to be contained in any application, declaration or other document to be filed with the department under this act;

(c) keep in its Helena office a centralized public record of permits, certificates, declarations, applications, and other documents filed in its office under this act;

(d) co-operate with, assist, advise, and co-ordinate plans and activities with the federal, state, and local agencies in matters relating to this act;

(e) upon request by any person, co-operate with, assist, and advise that person in matters pertaining to measuring water or filing declarations with the department under this act.

(2) The department may:

(a) enter into agreements with federal, state, or local agencies necessary to carry out this act;

(b) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other public or private source for the purposes of this act.

History: En. Sec. 4, Ch. 452, L. 1973.

89-869. Powers and duties of board. (1) The board may prescribe fees or service charges for any public service rendered by the department under this act or under Title 89, chapter 29, including fees for the filing of applications or for the issuance of permits and certificates. There shall be no fees for the filing of declarations or for the issuance of certificates of existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this act. These rules may include, but are not limited to, rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this act to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals, and to file reports on appropriations;

(d) regulate the construction, use and sealing of wells to prevent the waste, contamination or pollution of groundwater; and

(e) govern the issuance and terms of interim approval, authorizing an appropriator to change his appropriation right immediately pending final approval or denial by the department of the application for a proposed change in accordance with section 89-892.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property.

History: En. Sec. 5, Ch. 452, L. 1973; Amendments
amd. Sec. 1, Ch. 238, L. 1974.

The 1974 amendment added subdivision (2)(e).

89-870. Determination of existing rights. (1) The department shall establish a centralized record system of all existing rights, and the department shall, as soon as practicable, begin proceedings under this act to determine existing rights. To accomplish this, the department shall gather data essential to the proper understanding and determination of those existing rights.

(2) The department may select and specify areas or sources where the need for a determination of existing rights is most urgent, and first begin proceedings under this act to determine the existing rights in those areas or sources.

History: En. Sec. 6, Ch. 452, L. 1973.

89-871. Data for determination of existing rights. The data gathered by the department for the determination of existing rights shall include, but are not limited to:

(1) court decrees adjudicating water rights in a proceeding commenced prior to the effective date of this act. Upon request of the department, the clerks of the district courts shall furnish the department copies of all decrees affecting water rights;

(2) declarations of existing rights filed under section 8 [89-872];

(3) records of rights acquired under the groundwater code (sections 89-2911 through 89-2936);

(4) notices of appropriation filed under sections 89-801.2 and 89-810;

(5) records of declarations filed under sections 89-121 and 89-813;

(6) records of statements filed under section 89-907;

(7) the findings of water resource surveys conducted by the department and its predecessor agencies;

(8) the findings of inspections, surveys, reconnaissance, and investigations of the area or source involved as the department makes.

History: En. Sec. 7, Ch. 452, L. 1973.

Compiler's Notes

Sections 89-2912, 89-2913, 89-2919 to 89-2925 and 89-2935, contained in the reference to sections 89-2911 through 89-2936

in subdivision (3), were repealed by Sec. 46, Ch. 452, Laws 1973. Sections 89-801.2 and 89-810, referred to in subdivision (4), sections 89-121 and 89-813, referred to in subdivision (5), were repealed by Sec. 46, Ch. 452, Laws 1973.

DECISIONS UNDER FORMER LAW

Defective Notice of Appropriation

A notice of appropriation filed before the 1885 act but defective in that it was not verified as required by former sections 89-810 and 89-813 not only was not accorded the status of prima facie evidence under former section 89-814 but was

not even admissible in evidence. *Shammel v. Vogl*, 144 M 354, 396 P 2d 103, 111.

Where a notice of appropriation was dated 1886, referred to acts taking place in 1886, and was recorded in 1886, but the notary's certificate was dated 1885, it is obvious from the instrument itself that

the date in the notary's certificate was a clerical error, and the notice may be received as prima facie evidence of a right dating from 1886. *Shammel v. Vogl*, 144 M 354, 396 P 2d 103, 112.

Rebuttal of Prima Facie Evidence

A notice of appropriation meeting the requirements of former section 89-810 and

filed in 1886 was admissible in evidence and entitled to be treated as prima facie evidence under former section 89-814 but was not sufficient in itself to establish a water right from that date when its efficacy was destroyed by the claimant's own statement that he first used the water in 1961. *Shammel v. Vogl*, 144 M 354, 396 P 2d 103, 113.

89-872. Declarations of existing rights. (1) The department shall make an order requiring each person claiming an existing right within a specified area or from a specified source to file a declaration of existing right within one (1) year after the effective date of the order. The department shall publish notice of the order once a week for four (4) consecutive weeks prior to its effective date in a newspaper of general circulation in the affected area. Before the last date of publication, the department shall also serve a copy of the order by certified mail upon each appropriator or his successor in interest within the specified area or from the specified source who has requested mailed notice of the order or of whom the department can readily obtain knowledge, and to each person owning or being possessed of lands bordering on the stream or source as ascertained from the land ownership records of the appropriate county. The department shall file in its records proof of service of the notice by affidavit of the publisher in the case of notice by publication, and by its own affidavit in the case of service by mail.

(a) The department of fish and game may represent the public for purposes of establishing any prior and existing public recreational use in existing right determinations under this act, provided that the foregoing shall not be construed in any manner as a legislative determination of whether or not a recreational use sought to be established prior to July 1, 1973, is or was a beneficial use.

(2) A declaration shall be made under oath by each person claiming an existing right to use water within the specified area or from the specified source on a form provided by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The information required by the department may include, but is not limited to, the date of appropriation, the date the water was first applied to a beneficial use, the amount of water appropriated, the purpose of the appropriation, the place and means of diversion, the place of use, the time during which the water is diverted and used each year, and a true copy or the docket number of any judicial decree, notice, or other claim or evidence upon which the existing right was initiated or is based.

(3) Declarations shall be sent to the department by certified mail, with a return receipt requested. The return receipt is conclusive evidence of receipt, by the department, of the declaration.

History: En. Sec. 8, Ch. 452, L. 1973;
amd. Sec. 1, Ch. 265, L. 1974.

Amendments

The 1974 amendment inserted subdivision (1)(a).

89-873. Filing of petition. (1) The department shall, within a reasonable time after gathering all data necessary under section 7 [89-871] of this act, file a petition for determination of existing rights in the source or area specified in the order made under section 8 [89-872]. The department shall file the petition in the district court of the judicial district in which the source or area is located.

(2) If the source or area is in two (2) or more judicial districts, the department shall notify the district court of each of the judicial districts of its intent to file the petition. Within thirty (30) days of receipt of the notice, the judges of those district courts shall agree on which district judge shall hear the petition and shall notify the department of their decision. If the district judges fail to agree or to notify the department, the department shall file the petition in the district court of the judicial district in which the greatest number of persons named in the petition reside.

History: En. Sec. 9, Ch. 452, L. 1973.

89-874. Contents of petition. (1) The petition shall state the names of all persons who have filed declarations under section 8 [89-872] of this act and of all other persons who appear from the data gathered by the department to have existing rights to the use of waters within the specified area or from the specified source.

(2) The department shall file with the petition all data gathered under section 7 [89-871] of this act.

(3) If the district court determines that additional data is necessary prior to issuing the preliminary decree in order to determine the extent of an existing right, it may direct the department or the person claiming the right to obtain the necessary data.

History: En. Sec. 10, Ch. 452, L. 1973.

89-875. Preliminary decree. (1) Within a reasonable time after the filing of a petition for determination of existing rights, the court shall issue a preliminary decree. The preliminary decree shall be based on the data submitted with the petition and on any additional data obtained by the court.

(2) The preliminary decree shall contain the information, and make the determinations, findings, and conclusions, required for the final decree under section 13 [89-877] of this act.

(3) The district court shall send a copy of the preliminary decree by certified mail with return receipt requested to the department and to each person named in the petition filed under section 9 [89-873] of this act or named in the preliminary decree. The return receipt shall be appended to the preliminary decree. The costs of mailing the copies shall be paid by the department.

(4) A person named in the petition or in the preliminary decree may inspect the data upon which the decree is based at any time, and he may purchase copies of any of the data.

History: En. Sec. 11, Ch. 452, L. 1973.

89-876. Hearing on preliminary decree. (1) The department or a person named in the petition filed under section 9 [89-873] of this act or named in the preliminary decree, or any other person for good cause shown, who objects to the preliminary decree is entitled to a hearing thereon before the district court.

(2) A request for a hearing shall be filed with the district court, and a copy served on the department by certified mail, within ninety (90) days after receipt of the preliminary decree. The district court shall, for good cause shown, reasonably extend this time limit if application for the extension is made within ninety (90) days after receipt of the preliminary decree. A person requesting a hearing on his objections to the preliminary decree shall also serve, by certified mail with return receipt requested, a copy of his request on any person whose rights or priorities will be affected if the objections are sustained in the hearing. The rights and priorities of a person who is not served shall not be affected by the result of the hearing.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions, in the preliminary decree, with which the person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based. The request shall also state the names of all other persons on whom it is served.

(4) If more than one person requests a hearing on objections to the preliminary decree, the court may in its discretion hold a single hearing. Each hearing shall be conducted as are other civil actions, but the parties to the hearing may by agreement and with the court's permission waive any of the procedural or evidentiary rules, or may submit only written evidence. Only evidence which is referred to in a request may be introduced in a hearing.

(5) In each hearing, the department shall be a party and is entitled to be heard on objections made by any person. The department shall be granted adequate time, prior to a hearing, to gather evidence pertinent to any objection to be heard in the hearing.

History: En. Sec. 12, Ch. 452, L. 1973.

89-877. Final decree. (1) The court shall, on the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the court shall enter it as the final decree.

(2) The final decree shall establish the existing rights and priorities, of the persons named in the petition, for the source or area under consideration.

(3) The final decree shall state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person named in the decree are based.

(4) For each person who is found to have an existing right, the final decree shall state:

- (a) the name and post-office address of the owner of the right;
- (b) the amount of water included in the right;
- (c) the date of priority of the right;
- (d) the purpose for which the water included in the right is used;
- (e) the place of use and a description of the land to which the right is appurtenant;
- (f) the source of the water included in the right;
- (g) the place and means of diversion;
- (h) the approximate time during which the water is used each year;
- (i) any other information necessary to fully define the nature and extent of the right.

(5) The final decree in each existing right determination is final and conclusive as to all existing rights in the source or area under consideration. After the final decree there shall be no existing rights to water in the area or source under consideration except as stated in the decree.

History: En. Sec. 13, Ch. 452, L. 1973.

DECISIONS UNDER FORMER LAW

Collateral Attack

A decree giving appropriator the right to use water on certain named land outside the drainage area where appropriated

could not be attacked in a later proceeding on the ground that appropriator had never applied water to that land. *McIntosh v. Graveley*, 159 M 72, 495 P 2d 186.

89-878. Appeals from final decree. (1) A person whose existing rights and priorities are determined in the final decree may appeal the determination only if:

- (a) he requested a hearing and appeared and entered objections to the preliminary decree; or
- (b) his rights as determined in the preliminary decree were altered the result of a hearing, at which he appeared, requested by another person.

(2) An appeal from the final decree shall be taken as provided by the Montana Rules of Appellate Civil Procedure.

History: En. Sec. 14, Ch. 452, L. 1973.

89-879. Certificate of water right. When a final decree is entered, the court shall send a copy to the department. The department shall, on the basis of the final decree, issue to each person decreed an existing right a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder, in the county where the point of diversion or place of use is located, for recordation. The department

shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the person to whom the right is decreed.

History: En. Sec. 15, Ch. 452, L. 1973.

89-880. Right to appropriate—application for permit. (1) After the effective date of this act, a person may not appropriate water except as provided in this act. A person may only appropriate water for a beneficial use. A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription or estoppel; the method prescribed by this act is exclusive.

(2) Except as otherwise provided in subsection (4) of this section, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The department shall return a defective application for correction or completion together with the reasons for returning it. An application does not lose priority of filing because of defects, if the application is corrected, completed and refiled with the department within thirty (30) days after its return to the applicant, or within a further time as the department may allow.

(3) A permit issued prior to a final determination of existing rights is provisional and is subject to that final determination. The amount of the appropriation granted in a provisional permit shall be reduced or modified where necessary to protect and guarantee existing rights determined in the final decree. A person may not obtain any vested right, to an appropriation obtained under a provisional permit, by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action, where the permit would have been denied or modified if the final decree had been available to the department.

(4) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well with a maximum yield of less than one hundred (100) gallons a minute. Within sixty (60) days of completion of the well, the appropriator shall file notice of completion on a form provided by the department at its offices and at the offices of the county clerks and recorders. Upon receipt of the notice, the department shall automatically issue a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder, in the county where the point of diversion or place of use is located, for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(5) Persons required to file well logs and other information under the laws governing the conservation of oil and gas and who do so in compliance with those laws, shall be considered to have complied with

all of the filing requirements of this act to the extent it applies to wells subject to those laws. The date of appropriation shall be the date that written notice of intention to drill is given to the board of oil and gas conservation. A person who desires to convert a nonproductive oil or gas well to a water well may do so immediately, but shall file a notice of completion or apply for a permit, depending on the maximum yield of the well, as otherwise provided in this act.

(6) A person may also appropriate water, without applying for or prior to receiving a permit, under rules adopted by the board under section 89-869 of this act.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974.

Amendments

The 1974 amendment substituted "may not appropriate water * * * except by"

for "may appropriate water only by" in subsection (2); deleted "for domestic, agricultural, or livestock purposes" after "appropriating groundwater" in subsection (4); and made a minor change in style.

89-881. Notice of application. (1) Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for three (3) consecutive weeks. Before the last date of publication, the department shall also serve the notice by certified mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation. A notice shall also be served upon any public agency that has reserved waters in the source under section 26 [89-890]. The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation. The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication, and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than thirty (30) days nor more than sixty (60) days after the last date of publication) persons may file with the department written objections to the application.

History: En. Sec. 17, Ch. 452, L. 1973.

89-882. Objections. (1) An objection to an application must be filed by the date specified by the department under section 17 (2) [89-881 (2)].

(2) The objection must state the name and address of the objector, and facts tending to show that there are no unappropriated waters in the proposed source, that the proposed means of appropriation are inadequate, that the property, rights, or interests of the objector would be adversely affected by the proposed appropriation, or the objector may state any other objections to the proposed appropriation he considers pertinent.

History: En. Sec. 18, Ch. 452, L. 1973.

89-883. Hearings on objections. If the department determines that an objection to an application for a permit states a valid objection to the issuance of the permit, it shall hold a public hearing on the objection within sixty (60) days from the date set by the department for the filing of objections, after serving notice of the hearing by certified mail upon the applicant and the objector. The department may consolidate hearings if more than one (1) objection is filed to an application. The department shall file in its records proof of the service by affidavit of the department.

History: En. Sec. 19, Ch. 452, L. 1973.

89-884. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within one hundred twenty (120) days after the last date of publication of the notice of application if no hearing is held, and within one hundred eighty (180) days if a hearing is held.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department, nor denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application, but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions or limitations specified by it, or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within thirty (30) days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner, or denied, unless a hearing is requested.

History: En. Sec. 20, Ch. 452, L. 1973.

89-885. Criteria for issuance of permit. The department shall issue a permit if:

- (1) there are unappropriated waters in the source of supply;
- (2) the rights of a prior appropriator will not be adversely affected;
- (3) the proposed means of diversion or construction are adequate;
- (4) the proposed use of water is a beneficial use;
- (5) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

History: En. Sec. 21, Ch. 452, L. 1973.

89-886. Terms of permit. (1) The department may issue a permit for less than the amount of water requested, but in no case may it issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. It may issue a

permit subject to terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other appropriators, and it may issue temporary or seasonal permits. A permit shall be issued subject to existing rights and any final determination of those rights made under this act.

(2) The department may limit the time for commencement of the appropriation works, completion of construction and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. For good cause shown by the permittee, the department may in its discretion reasonably extend time limits.

(3) The original of the permit shall be sent to the county clerk and recorder in the county where the point of diversion or place of use is located for recordation, and a copy shall be kept in the office of the department in Helena. After recordation, the clerk and recorder shall send the permit to the permittee.

History: En. Sec. 22, Ch. 452, L. 1973.

89-887. Revocation of permit. If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension thereof, or if the water is not being applied to the beneficial use contemplated in the permit, or if the permit is otherwise not being followed, the department may after notice require the permittee to show cause why the permit should not be revoked. If the permittee fails to show sufficient cause, the department may revoke the permit.

History: En. Sec. 23, Ch. 452, L. 1973.

89-888. Certificate of water right. (1) Upon actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been properly completed. The department may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit, it shall issue the permittee a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder in the county wherein the point of diversion or place of use is located for recordation, and a duplicate shall be kept in the office of the department in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator.

(2) Except as provided in section 16 (4) [89-880 (4)] of this act, a certificate of water right in a particular source may not be issued prior to a general determination under this act of existing rights in that source.

History: En. Sec. 24, Ch. 452, L. 1973.

89-889. Reservoirs. A person intending to appropriate water by means of a reservoir shall apply for a permit as prescribed in this act.

History: En. Sec. 25, Ch. 452, L. 1973.

89-890. Reservation of waters. (1) The state or any political subdivision or agency thereof, or the United States or any agency thereof, may apply to the board to reserve waters for existing or future beneficial uses, or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Upon receiving an application, the department shall proceed in accordance with sections 17 through 19 [89-881 through 89-883]. After the hearing provided in section 19 [89-883], the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records, incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant.

(3) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

- (a) the purpose of the reservation;
- (b) the need for the reservation;
- (c) the amount of water necessary for the purpose of the reservation;
- (d) that the reservation is in the public interest. If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(4) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters, or may, with the approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.

(5) A reservation under this section shall not affect any rights in existence when the order reserving waters is adopted.

(6) The board shall, periodically but not less than every ten (10) years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke or modify the reservation.

History: En. Sec. 26, Ch. 452, L. 1973.

89-891. Priority. (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow, or the lowering of a water table, artesian pressure or water level, if the prior appropriator can reasonably exercise his water right under the changed conditions.

(2) Priority of appropriation made under this act dates from the filing of an application for a permit with the department, except as otherwise provided in section 16 [89-880] of this act.

(3) Priority of appropriation perfected before the effective date of this act shall be determined as provided in sections 6 through 15 [89-870 through 89-879] of this act.

History: En. Sec. 27, Ch. 452, L. 1973.

89-891.1. Water turned into natural channels. Water appropriated under an existing right or pursuant to this act may be turned into the natural channel of another stream, or from a reservoir into the natural channel, and withdrawn or diverted at a point downstream for beneficial use, but the waters of that stream may not thereby be diminished in quantity or deteriorated in quality to the detriment of a prior appropriator. Water stored in a reservoir under an existing right or pursuant to this act which is turned into a natural channel for withdrawal or diversion and beneficial use downstream shall not be considered a part of the natural flow of that stream.

History: En. 89-891.1 by Sec. 1, Ch. 103, L. 1974.

Title of Act

An act recognizing the right to turn water into natural channels, adding a new section to the Water Use Act.

89-892. Changes in appropriation rights. (1) An appropriator may not change the place of diversion, place of use, purpose of use or place of storage without receiving prior approval of such change from the department.

(2) The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with section 89-881. If the department determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of section 89-882(2), and hearings shall be held in accordance with section 89-883.

History: En. Sec. 28, Ch. 452, L. 1973; amd. Sec. 3, Ch. 238, L. 1974.

the third sentence for "If a person whose rights may be affected files an objection to the proposed change"; deleted after the present third sentence a sentence which read "Notice of the proposed change shall be given in accordance with section 17 [89-881] of this act"; and made minor changes in style.

Amendments

The 1974 amendment inserted the second sentence in subsection (2); substituted "If the department determines * * * valid objection to the proposed change" in

DECISIONS UNDER FORMER LAW

Diversion Point Changed

Appropriator was entitled to move his point of diversion downstream, so long as he installed measuring devices to ensure that he took no more than would have been available at his original point of diversion, and the fact that a water commissioner might have to be employed to oversee the appropriation was not the kind of burden on other appropriators

that would prevent the change. *McIntosh v. Graveley*, 159 M 72, 495 P 2d 186.

Remedies of Servient Owner

Changes in a ditch appurtenant to a water right did not forfeit the ditch right or justify the use of self-help by the servient landowner to fill in a portion of the ditch. *Shammel v. Vogl*, 144 M 354, 396 P 2d 103, 108.

Substantial Change

Under former section 89-803, the owner of a ditch appurtenant to a water right could change the location by minor meandering along the course of the ditch and its marginal land with a dozer to account for topographical adjustments in the terrain, so long as he did not add any new burden to the servient estate or cause any additional damage thereto. *Shammel v. Vogl*, 144 M 354, 396 P 2d 103, 109.

Use of Water Changed

Where appropriator had a decreed right to use water for irrigation of specified land outside the drainage area, his use of the water on other land outside the drainage area did not impose an undue burden on other appropriators, so long as he did not increase the amount of water diverted from the drainage area. *McIntosh v. Graveley*, 159 M 72, 495 P 2d 186.

89-893. Transfer of appropriation right. (1) The right to use water under a permit or certificate of water right shall pass with a conveyance of the land, or transfer by operation of law, unless specifically exempted therefrom. All transfers of interests in appropriation rights shall be without loss of priority.

(2) The person receiving the appropriation interest shall file with the department notice of the transfer on a form prescribed by the department.

(3) An appropriator may not sever all or any part of an appropriation right from the land to which it is appurtenant, or sell the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands, without obtaining prior approval from the department. The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with section 89-881. If the department then determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of section 89-882(2) and hearings shall be held in accordance with section 89-883.

History: En. Sec. 29, Ch. 452, L. 1973; amd. Sec. 4, Ch. 238, L. 1974.

posed transfer if the requirements of section 28(2) [89-8922] are met."

Amendments

The 1974 amendment rewrote subsection (2) which read: "A copy of an instrument which transfers an interest in an appropriation right shall be filed with the department and the county, in which the point of diversion or place of use is located, by the person receiving the appropriation interest"; and rewrote the second sentence of subsection (3) which read: "The department shall approve the pro-

Effective Date

Section 5, Ch. 238, Laws of 1974 read "This act is effective on its passage and approval. The amendments made by this act apply to any application for a permit, change in appropriation right, or transfer of appropriation right, received by the department before the effective date of this act, and which has not yet been approved, granted, denied, or modified." Approved March 21, 1974.

89-894. Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right, or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be deemed considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right, or ceases using his appropriation right according to its terms and conditions, for a period of ten (10) successive years, and there was water available for his use, there shall be a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used.

(3) This section does not apply to existing rights until they have been determined in accordance with this act.

History: En. Sec. 30, Ch. 452, L. 1973.

DECISIONS UNDER FORMER LAW

Intent to Abandon

Mere nonuser of a ditch appurtenant to a water right is not sufficient to estab-

lish abandonment; there must be concurrent intent to abandon. *Shammel v. Vogl*, 144 M 354, 396 P 2d 103, 107.

89-895. Procedure for declaring appropriation rights abandoned. (1) When the department has reason to believe that an appropriator may have abandoned his appropriation right under section 30 [89-894], or when another appropriator in the opinion of the department files a valid claim that he has been or will be injured by the resumption of use of an appropriation right alleged to have been abandoned, the department shall petition the district court which determined the existing rights in the source of the appropriation in question to hold a hearing to determine whether the appropriation right has been abandoned. Proceedings under this section shall be conducted in accordance with the Montana Rules of Civil Procedure, and appeal shall be taken in accordance with the Montana Rules of Appellate Civil Procedure.

(2) At the hearing, the burden of proof shall be on the department which must establish by a preponderance of the evidence that the appropriation has been abandoned under section 30 [89-894] of this act.

(3) The determination of the court shall be appended to the final decree. The department shall keep a copy of the determination in its office in Helena.

History: En. Sec. 31, Ch. 452, L. 1973.

89-896. Supervision of water distribution. (1) As of the effective date of this act, the district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior to the effective date of this act. The supervision shall be governed by the principle that first in time is first in right.

(2) When a water distribution controversy arises upon a source of water in which existing rights have not been determined according to sections 6 through 15 [89-870 through 89-879] of this act, the department may, in its discretion, within a reasonable time begin proceedings to determine existing rights in the source, in accordance with this act. If the department does not proceed to obtain a determination of existing rights, the district court shall settle only the controversy between the parties.

(3) A controversy between appropriators from a source which has been the subject of a general determination of existing rights under sections 6 through 15 [89-870 through 89-879] of this act shall be settled by the district court which issued the final decree. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy shall be appended to the final decree, and a copy shall be filed with the department.

(4) The department shall be named as a party in any proceeding under this section and shall be served with process.

History: En. Sec. 32, Ch. 452, L. 1973.

89-897. Prevention of waste. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, or preventing water from moving to another person having a prior right to use the same, it may petition the district court to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water, or to secure water to a person having a prior right to its use; the department may attach to the controlling works a written notice properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it, which notice shall be legal notice to all persons interested in the appropriation or distribution of the water; or

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so, and to take such steps as may be necessary to remedy the waste, unlawful use, or interference; or

(2) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin such waste, unlawful use, or interference.

History: En. Sec. 33, Ch. 452, L. 1973.

89-898. Entry on land—inspections. Any employee or agent of the department authorized by the director may enter upon any land to carry out the purpose of this act, including, but not limited to, entry to make inspections the department considers necessary of proposed works, source of water, location of the proposed use, construction of works and other inspections to ascertain whether or not persons are complying with this act. The department or its agent shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to any property.

History: En. Sec. 34, Ch. 452, L. 1973.

89-899. Legal assistance. (1) When requested by the department, the attorney general and the county attorneys within their respective

counties shall perform legal services and conduct legal proceedings necessary to carry out the purposes of this act. The department may also employ legal counsel to enforce this act and to conduct proceedings under it.

(2) If an appropriator who is a citizen of Montana becomes involved in a controversy to which any agency of the federal government or another state is a party, the department may in its discretion intervene as a party or provide necessary legal assistance to the citizen of Montana.

History: En. Sec. 35, Ch. 452, L. 1973.

89-8-100. Hearings before board—Administrative Procedure Act. (1) A person who is aggrieved by a final decision of the department is entitled to a hearing before the board.

(2) The Montana Administrative Procedure Act (Title 82, chapter 42, R. C. M. 1947) governs administrative proceedings conducted under this act.

History: En. Sec. 36, Ch. 452, L. 1973.

89-8-101. Penalties. A person who violates or refuses or neglects to comply with sections 16 (1), 28 (1), and 29 (3) [89-880 (1), 89-892 (1), and 89-893 (3)] of this act, or of any order of the department, or of any rule of the board, is guilty of a misdemeanor.

History: En. Sec. 37, Ch. 452, L. 1973.

89-8-102. Deposit of fees and penalties. All fees and penalties collected under this act shall be deposited in the state general fund. All penalties or fines imposed by any court for a violation of this act shall be deposited in the general fund of the county where the court presides and shall be disposed of in the same manner as any other penalty or fine.

History: En. Sec. 38, Ch. 452, L. 1973.

89-8-103. Statement of legislative findings and policy. The legislature, noting that appropriations have been claimed, that applications have been filed for, and that there is further widespread interest in making substantial appropriations of water in the Yellowstone River Basin, finds that these appropriations threaten the depletion of Montana's water resources to the significant detriment of existing and projected agricultural, municipal, recreational and other uses, and of wildlife and aquatic habitat. The legislature further finds that these appropriations foreclose the options to the people of this state to utilize water for other future beneficial purposes, including municipal water supplies, irrigation systems, and minimum flows for the protection of existing rights and aquatic life. The legislature pursuant to its mandate and authority under article IX of the Montana constitution, declares that it is the policy of this state that before these proposed appropriations are acted upon existing rights to water in the Yellowstone basin must be accurately determined for their protection,

and that reservations of water within the basin must be established as rapidly as possible for the preservation and protection of existing and future beneficial uses.

History: En. 89-8-103 by Sec. 1, Ch. 116, L. 1974.

Title of Act

An act providing for the suspension of action on certain applications for permits to appropriate surface water or for changes in purpose of use in the Yellow-

stone River Basin for three (3) years or until existing rights have been determined, whichever occurs first; making reservations established under the Montana Water Use Act preferred uses over such permits; and providing for an immediate effective date.

89-8-104. Definitions. Unless the context clearly requires otherwise, in this act:

(1) "Department" means the department of natural resources and conservation.

(2) "Basin" means the Yellowstone River Basin.

(3) "Application" means an application for a permit under the Montana Water Use Act to appropriate surface water from any source of supply within the basin for either or both of the following purposes:

(a) a reservoir with a total planned capacity of fourteen thousand (14,000) acre feet or more, or

(b) for a flow rate greater than twenty (20) cubic feet of water per second.

The term also includes an application for approval under section 89-892, R. C. M. 1947, to change the purpose of use.

(4) "Reservation" means a reservation of water provided for by section 89-890 of the Montana Water Use Act.

History: En. 89-8-104 by Sec. 2, Ch. 116, L. 1974.

89-8-105. Suspension of action. (1) The department may not grant or otherwise take any action on an application until either of the following first occurs:

(a) three (3) years have elapsed from the effective date of this act, or

(b) a final determination of existing rights has been made in the source of supply in accordance with the Montana Water Use Act.

(2) A reservation established before such application for permit is granted is a preferred use over the right to appropriate water pursuant to the permit, and the permit, if granted, shall be issued subject to that preferred use.

History: En. 89-8-105 by Sec. 3, Ch. 116, L. 1974.

89-8-106. When department may suspend action. The department may suspend action on applications not meeting the definition of application in section 2 [89-8-104] of this act if it determines, after a public hearing conducted under the contested case procedures of the Montana Administrative Procedure Act, that the cumulative impact of those applications,

if granted, would be contrary to the policies and purposes of this act. If the department suspends action on such applications, the provisions of section 3 [89-8-105] of this act apply.

History: En. 89-8-106 by Sec. 4, Ch. 116,
L. 1974.

89-8-107. Reservations. The department may apply for reservations and shall, as rapidly as possible, assist other appropriate state agencies and political subdivisions in applying for reservations within the basin. The United States or any agency thereof may not apply for a reservation of water in the basin under section 89-890, R. C. M. 1947, until the requirements of section 3 [89-8-105] of this act are met. Particular emphasis shall be given to applications to reserve water for agricultural, municipal, and minimum flow purposes for the protection of existing rights and aquatic life.

History: En. 89-8-107 by Sec. 5, Ch. 116,
L. 1974.

89-8-108. Application of act. This act applies to applications currently pending with the department, as well as applications filed with the department after the effective date of this act.

History: En. 89-8-108 by Sec. 6, Ch. 116,
L. 1974.

89-8-109. Utility facilities. This act does not apply to applications to appropriate water for use by a utility facility for which a certificate of environmental compatibility and public need is granted pursuant to the Montana Utility Siting Act of 1973.

History: En. 89-8-109 by Sec. 7, Ch. 116,
L. 1974.

89-8-110. Certain changes of use allowed. Notwithstanding any provision of this act, the department may approve a change of purpose of use to agricultural, irrigation, domestic and municipal uses if it determines that the change is not contrary to the policies and purposes of this act.

History: En. 89-8-110 by Sec. 8, Ch. 116,
L. 1974.

89-8-111. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

History: En. 89-8-111 by Sec. 9, Ch. 116, L. 1974. vided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

Effective Date

Section 10 of Ch. 116, Laws 1974 pro-

CHAPTER 9—YELLOWSTONE RIVER COMPACT—RATIFICATION OF

Section 89-906. Definitions.

89-907. Filing written statement with department.

- 89-908. Duty to install weir or other measuring device.
- 89-909. Duty to measure water.
- 89-912. Board of natural resources and conservation to make rules and regulations.
- 89-914. Department to make record available.
- 89-915. County attorneys to perform certain services.
- 89-916. Penalty.

89-906. Definitions. Unless the context requires otherwise, in this act:

(a) The term "person" means any person, corporation, partnership, association, municipal corporation, agency and all others authorized by the laws of the state to appropriate water for beneficial uses.

(b) The term "interstate tributaries" or "interstate tributary" means the following described rivers which contribute to the flow of the Yellowstone river in the state of Montana, including all tributaries thereof: the Clark Fork of the Yellowstone river; the Big Horn river (except the Little Big Horn river); the Tongue river; and the Powder river, whose confluences with the Yellowstone river are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the state of Montana.

(c) The term "domestic use" means the use of water by an individual, or by a family unit or household for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

(d) The term "stock water use" means the use of water for livestock and poultry.

(e) The term "divert" and "diversion" means the taking or removing of water from any interstate tributary or any tributary thereof, when the water so taken or removed is not returned directly into the channel of the interstate tributary or of the tributary thereof from which it is taken.

(f) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

History: En. Sec. 2, Ch. 92, L. 1953; amd. Sec. 156, Ch. 253, L. 1974.

Amendments

The 1974 amendment rewrote the introductory clause which read: "As used in this act, the following terms shall have

the following meaning"; deleted a second sentence in subdivision (a) which read: "Where the singular is used it shall be construed to include the plural"; added subdivision (f); and made minor changes in phraseology.

89-907. Filing written statement with department. (1) Any person claiming an appropriative right to the use of any water of any interstate tributary which right was acquired after January 1, 1950, shall within sixty days after the approval of this act, or before he diverts any water, file with the department at its office in Helena, Montana, a written statement containing the following information:

(a) The name of the claimant and his address.

(b) Date of appropriation or the date when the water was first applied to a beneficial use.

(c) The quantity of water claimed.

(d) The name of the stream, river or other source of water from which the diversion is made, if it has a name, and if it does not, such a description as will identify the same.

(e) The purpose for which the water is claimed and the place of intended use.

(f) The means of diversion.

(g) Whether or not a weir or other device for measuring the water intended to be diverted has been installed in his ditch or other means of diversion.

(h) If a notice of appropriation was filed with the county clerk and recorder, as provided by section 89-810, the name of the county where it was filed.

(i) Whether the appropriation was made from an adjudicated or nonadjudicated stream, river or other source of water.

(2) The written statement shall be verified by the affidavit of the claimant or someone in his behalf, which affidavit must state that the matters and facts contained in the written statement are true.

History: En. Sec. 3, Ch. 92, L. 1953; amd. Sec. 10, Ch. 280, L. 1965; amd. Sec. 157, Ch. 253, L. 1974.

Compiler's Notes

Section 89-810, referred to in subdivision (h), was repealed by Sec. 46, Ch. 452, Laws 1973.

Amendments

The 1965 amendment substituted "state water conservation board" for "state engineer" in the first paragraph; and made a minor change in phraseology.

The 1974 amendment inserted the subsection designations (1) and (2); and substituted "department" for "state water conservation board" in subsection (1).

89-908. Duty to install weir or other measuring device. Any person claiming an appropriative right to use any waters of any interstate tributary of the Yellowstone river which right was acquired subsequently to January 1, 1950, shall, after the approval of this act and before he diverts any such water, install in his ditch, or other means of diversion, a weir or other measuring device so that all of the water to be diverted by him can be accurately measured. The installation of a weir or other measuring device is subject to the approval of the department, and if in its judgment such weir or other measuring device, or the installation of the same, is defective so that the water cannot be accurately measured, it may order the installation of an accurate measuring device and the claimant shall not divert any water until he complies with such order.

History: En. Sec. 4, Ch. 92, L. 1953; amd. Sec. 11, Ch. 280, L. 1965; amd. Sec. 158, Ch. 253, L. 1974.

Amendments

The 1965 amendment substituted "state

water conservation board" for "state engineer" in the second sentence; and made minor changes in phraseology.

The 1974 amendment substituted "department" for "state water conservation board."

89-909. Duty to measure water. Each claimant shall measure all the water being diverted by him and keep accurate records thereof on forms prescribed and furnished by the department, and within fifteen (15) days after the first day of November of each year file the written records with the department at its office in Helena, Montana.

History: En. Sec. 5, Ch. 92, L. 1953; amd. Sec. 12, Ch. 280, L. 1965; amd. Sec. 159, Ch. 253, L. 1974.

Amendments

The 1965 amendment substituted "state water conservation board" for "state engineer" in two places; and made a minor change in phraseology.

The 1974 amendment substituted "Each claimant shall measure" for "It shall be the duty of every said claimant to measure"; substituted "department" for "state water conservation board" in two instances; and made minor changes in phraseology.

89-912. Board of natural resources and conservation to make rules and regulations. The board of natural resources and conservation shall adopt and the department shall enforce reasonable rules consistent with this act and the Yellowstone River Compact.

History: En. Sec. 8, Ch. 92, L. 1953; amd. Sec. 13, Ch. 280, L. 1965; amd. Sec. 160, Ch. 253, L. 1974.

Amendments

The 1965 amendment substituted "state water conservation board" for "state engineer."

The 1974 amendment rewrote this section which read: "The state water conservation board shall prescribe and enforce reasonable rules and regulations consistent with this act and the Yellowstone River Compact."

89-914. Department to make record available. The department shall furnish and make available to the Yellowstone river compact commission, from the records filed in its office, all appropriative rights to the use of the waters of the interstate tributaries of the Yellowstone river in the state of Montana, acquired after January 1, 1950, the amount of the annual diversions from those interstate tributaries and any other information that its records may disclose as may be required by the Yellowstone river compact commission.

History: En. Sec. 10, Ch. 92, L. 1953; amd. Sec. 14, Ch. 280, L. 1965; amd. Sec. 161, Ch. 253, L. 1974.

Amendments

The 1965 amendment substituted "state

water conservation board" for "state engineer"; and made minor changes in phraseology.

The 1974 amendment substituted "department" for "state engineer"; and made a minor change in phraseology.

89-915. County attorneys to perform certain services. The county attorneys of the state shall perform such legal services and bring such proceedings in carrying out the purposes of this act within their respective counties as the department shall require.

History: En. Sec. 11, Ch. 92, L. 1953; amd. Sec. 162, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state engineer."

89-916. Penalty. Any person who violates or refuses or neglects to comply with any provision of this act, or any order or rule adopted by the board or department pursuant thereto or the Yellowstone River Compact, is guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200) for each offense.

History: En. Sec. 12, Ch. 92, L. 1953; amd. Sec. 163, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "order or rule adopted by the board or depart-

ment" for "order, rule or regulation promulgated by the state engineer"; and made minor changes in phraseology and style.

CHAPTER 10—WATER COMMISSIONERS—DETERMINATION OF JOINT RIGHTS

Section 89-1001. Appointment of water commissioners—authority—compensation.

89-1001. (7136) Appointment of water commissioners—authority—compensation. (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, it shall be the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least fifteen per cent (15%) of the water rights affected by the decree, in the exercise of his discretion, to appoint one or more commissioners, who shall have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates and permits issued under the Montana Water Use Act provided that when petitioners make proper showing that they are not able to obtain the application of the owners of at least fifteen per cent (15%) of the water rights affected, and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may, in his discretion, appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a final decree issued under the Montana Water Use Act, the judge of the district court which issued the final decree shall upon application by the department of natural resources and conservation appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department, or any other owner of stored waters may petition the court to have such stored waters distributed by the water commissioners appointed by said court. The court may thereupon make an order requiring the commissioner or commissioners appointed by the court to distribute such stored water when and as released to water users entitled to the use thereof.

(4) Upon the issuance of such order the water commissioner or commissioners shall have authority and it is hereby made his or their duty to admeasure and distribute to the users thereof as their interests may appear and be required, the stored and supplemental waters stored and as released by the department of natural resources and conservation under provisions of the state Water Conservation Act, chapter 1 of this title, to be diverted into and through said streams, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply in the same manner and under the same rules and regulations as decreed water rights

are admeasured and distributed, and such water commissioner or commissioners and the owners and users of such stored and supplemental waters shall be bound by and be subject to the provisions of this chapter, and all acts amendatory thereof and supplemental thereto, provided that the admeasurements and distribution of such stored and supplemental waters shall in no way interfere with decreed water rights. The purpose of this act is to provide a uniform, equitable and economical distribution of adjudicated, stored and supplemental waters.

(5) At the time of the appointment of such water commissioner or commissioners the district court shall fix their compensation, and the owners and users of the distributed waters shall pay their proportionate share of such fees and compensation.

History: Earlier acts relating to water commissioners were Secs. 1 to 3, pp. 136 and 137, Laws of 1899, and chapter 64, Laws of 1905. These acts appeared as sections 4881 to 4889, Revised Codes 1907, and were repealed by chapter 43, Laws of 1911. This section en. Sec. 1, Ch. 43, L. 1911; re-en. Sec. 7136, R. C. M. 1921; amd. Sec. 1, Ch. 125, L. 1925; amd. Sec. 1, Ch. 187, L. 1939; amd. Sec. 1, Ch. 231, L. 1963; amd. Sec. 39, Ch. 452, L. 1973.

Amendments

The 1973 amendment substituted "parties owning water rights in the source affected by the decree" for "parties bound by the decree or decrees" in the middle

of subsection (1); inserted "and by any certificates and permits issued under the Montana Water Use Act" immediately before the proviso to subsection (1); inserted subsection (2); renumbered former subsections (2), (3) and (4) as (3), (4) and (5); substituted references to the department of natural resources and conservation for references to the state water conservation board throughout the section; substituted "the distributed waters" for "decreed, stored and supplemental waters" near the end of subsection (5); and made minor changes in phraseology.

References

Allen v. Wampler, 143 M 486, 392 P 2d 82.

89-1015. (7150) Complaint by dissatisfied user—procedure on.

Purpose of Summary Proceeding

The district court had no authority in a proceeding under this section to approve a method of distribution which changed the point of diversion of water to a tract and changed the transportation ditch

thereto, as the only function of the court in such a proceeding is to determine whether the water involved is being allocated in compliance with existing decrees and not to decree new water rights. Allen v. Wampler, 143 M 486, 392 P 2d 82.

CHAPTER 12—IRRIGATION DISTRICTS—ORGANIZATION

Section 89-1201. Creation of irrigation districts—percentage of titleholders required—what constitutes evidence of title—report of department of natural resources and conservation—payment of expenses.

89-1208. Compensation of commissioners—penalty for interest in contract—bonds of commissioners.

89-1215. Records required to be kept—examination by department of inter-governmental relations.

89-1201. (7166) Creation of irrigation districts—percentage of titleholders required—what constitutes evidence of title—report of department of natural resources and conservation—payment of expenses. (1) Sixty per centum in number of the holders of title or evidence of title to lands sought to be included in an irrigation district and which are susceptible of irrigation, such holders of title or evidence of title also representing sixty per centum of the acreage of said lands, may propose the establish-

ment and organization of an irrigation district under the provisions of this act; provided, however, that when any of such land sought to be included in such irrigation district is covered by mortgage or other lien then the owner or owners of such land shall first procure the written consent of the holder of such mortgage or other lien before proposing the establishment and organization of such irrigation district. Irrigation districts may be formed in order to co-operate with the United States under the federal reclamation laws heretofore or hereafter enacted, or under any act of Congress which shall permit of the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation, or maintenance of constructed works, or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands. When so organized, such district shall have the powers conferred or that may hereafter be conferred, by law upon such irrigation district, provided, however, that in all irrigation districts organized in connection with United States reclamation projects a majority of the holders of title or evidence of title to lands sought to be included in such irrigation district under the provisions of the act, may propose the establishment and organization of such district.

(2) The certificate of the county clerk and recorder, or the certificate of the department of state lands, shall be sufficient evidence of title for the purpose of this act. Where lands have been purchased from the state and part or all of the purchase money has been paid, but the patents or deeds from the state to such lands have not been issued, the receipt or receipts held by the purchasers, or the certificate of the department of state lands showing the payments on account of purchase, shall be evidence of title to such lands under this act.

(3) Before any such district shall be established, there shall be presented to the district court at the hearing on the petition for such establishment, a written report or opinion from the department of natural resources and conservation on the engineering features involved and the possibilities of water supplies accompanied by a copy of the decree of the district court showing the adjudicated water rights in said streams from which said waters are to be diverted. For this purpose, a copy of the petition provided for in section 89-1202 and of all maps and other papers filed with the same, shall be filed with the department at the time the original petition is filed with the clerk of the district court. The expense, if any, incurred by the department in the investigation and report upon the proposed district shall be certified, with the report, and that the department shall, within a period of one hundred twenty days from the filing of said petition with the department, render its report, as herein provided, to the said district court, and shall be assessed as costs in said hearing, which costs shall be paid by the district in event of its establishment and in event such petition be denied, then such costs shall be paid by the petitioners; provided, however, that such report or opinion shall be not requested or obtained, and shall not be necessary, whenever it is proposed to co-operate with the United States under the federal reclamation laws heretofore or

hereafter enacted, or under any act of Congress which shall permit of the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation or maintenance of constructed works, or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district laws.

History: The first irrigation district act was Ch. 70, L. 1907, appearing as Secs. 2309-2402, Rev. C. 1907; repealed by Ch. 146, L. 1909.

This section en. Sec. 1, Ch. 146, L. 1909; amd. Sec. 1, Ch. 153, L. 1917; amd. Sec. 1, Ch. 116, L. 1919; re-en. Sec. 7166, R. C. M. 1921; amd. Sec. 1, Ch. 157, L. 1923; amd. Sec. 1, Ch. 112, L. 1925; amd. Sec. 15, Ch. 280, L. 1965; amd. Sec. 164, Ch. 253, L. 1974.

Amendments

The 1965 amendment substituted "the state water conservation board" or "said board" for "the state engineer" or "said

engineer" in five places in subsection (3); deleted "(other than his salary)" which followed "incurred by the state engineer" near the beginning of the third sentence of subsection (3); and made other minor changes in phraseology in subsection (3).

The 1974 amendment substituted "department of state lands" for "register of the state land office" in two instances in subsection (2); substituted references to the "department of natural resources and conservation" for references to "state water conservation board" in subsection (3); and made a minor change in phraseology.

89-1208. (7173) Compensation of commissioners—penalty for interest in contract—bonds of commissioners. The commissioners, when sitting as a board or when engaged in the business of the district, shall each receive not to exceed twenty dollars (\$20), per day for services, and, in addition thereto, their necessary expenses in attending meetings, or when otherwise engaged on district business, including premiums on qualifying bonds and any other bonds required of them in connection with their office, provided such expenses and per diem be approved by a unanimous vote of said board and a mileage allowance of twelve cents (\$.12) per mile in attending board meetings or when engaged in the business of the irrigation district.

No commissioner or any other officer named in this act shall in any manner be interested directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor and his conviction thereof shall work forfeiture of his office and he shall be punished by a fine not exceeding five hundred dollars (\$500.00), or by imprisonment in the county jail not exceeding six (6) months or by both such fine and imprisonment.

The commissioners of said irrigation district shall each furnish a bond in the penal sum of twenty-five hundred dollars (\$2500.00), with corporate surety conditioned for the faithful performance of their duties under this act, and the secretary shall furnish bond, with corporate surety, in the sum of one thousand dollars (\$1000.00), conditioned for the faithful performance of his duties pursuant to this act, and for the proper and safekeeping of the records and documents of said district, in all cases where the obligations of said district, either existing or proposed, total two hundred and fifty thousand dollars (\$250,000.00) or over. In all other cases the bond for said commissioners shall be in the sum of one thousand dollars (\$1000.00).

History: En. Sec. 8, Ch. 146, L. 1909; amd. Sec. 1, Ch. 120, L. 1921; re-en. Sec. 7173, R. C. M. 1921; amd. Sec. 3, Ch. 157, L. 1923; amd. Sec. 1, Ch. 116, L. 1927; amd. Sec. 1, Ch. 15, L. 1929; amd. Sec. 1, Ch. 62, L. 1965; amd. Sec. 1, Ch. 153, L. 1973.

Amendments

The 1965 amendment increased the daily compensation of the commissioners set forth in the first paragraph from \$5 to \$10.

The 1973 amendment increased the compensation of commissioners from \$10 to \$20 per day; and added the provision for a mileage allowance at the end of the first paragraph.

89-1215. Records required to be kept—examination by department of intergovernmental relations. It shall be the duty of the board of control to keep, or cause to be kept, a full and complete book and record of the accounts, records, contracts, securities, minutes of meetings and other matters of every kind pertaining to or belonging to the joint operation of the irrigation districts, in the form prescribed by the department of intergovernmental relations.

It is hereby made the duty of the department of intergovernmental relations to prescribe such forms for the use of the board of control, and to examine the same as provided by law for the examination of the affairs of county offices.

History: En. Sec. 7, Ch. 179, L. 1959; amd. Sec. 165, Ch. 253, L. 1974.

partment of intergovernmental relations" for "state examiner" in the caption and in two places in the text of the section.

Amendments

The 1974 amendment substituted "de-

CHAPTER 13—IRRIGATION DISTRICTS—BOARD OF COMMISSIONERS, POWERS, DUTIES AND ELECTIONS

Section 89-1301. Powers and duties of commissioners.

89-1301. (7174) Powers and duties of commissioners. The board of commissioners of every irrigation district established and organized under and by virtue of this act shall constitute the corporate authority of said district.

(1) to (4). * * * [Same as parent volume.]

(5) But no purchase, lease or contract for purchase of any water, or water rights, or canals, or reservoirs, or reservoir sites, or dam sites, or irrigation works or other property of any nature or kind or for the making or purchasing of surveys, maps, plans, estimates and specifications, or for the purchase of machinery for pumping plants, or the erection of buildings, aqueducts and other structures necessarily used in connection with such pumping plants, for a price or rental in excess of twenty-five thousand dollars (\$25,000), shall be final or binding upon the district, nor shall said sum be paid without the written consent or petition of at least a majority in number and acreage of the holders of title or evidence of title to the lands within the district. Any splitting or division of such purchase, lease or contract with the purpose or intention of avoiding or circumventing the provisions of this section shall render such divided or split contract or contracts absolutely null and void.

(6) to (13). * * * [Same as parent volume.]

History: En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R. C. M. 1921; amd. Sec. 4, Ch. 157, L. 1923; amd. Sec. 1, Ch. 111, L. 1973.

Amendments

The 1973 amendment increased the amount specified in subdivision (5) from \$10,000 to \$25,000.

CHAPTER 17—IRRIGATION DISTRICTS—BONDS

- Section 89-1701. Limitations on debt-incurring power.
 89-1705. Details relating to bonds.
 89-1706. Liens of bonds.
 89-1708. Delivery of bonds—disposition of proceeds.
 89-1712. Refunding bonds.

89-1701. (7208) Limitations on debt-incurring power. The board of commissioners or other officers of the district shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, except as provided in this act; and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void, except that for the purpose of organization or for any of the immediate purposes of this act, or to make or purchase surveys, plans, and specifications, or for stream gauging and gathering data, or to make any repairs occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur the indebtedness of as many dollars as there are acres in the district, and may cause warrants of the district to issue therefor.

History: En. Sec. 38, Ch. 146, L. 1909; amd. Sec. 1, Ch. 110, L. 1913; amd. Sec. 1, Ch. 127, L. 1913; re-en. Sec. 7208, R. C. M. 1921; amd. Sec. 32, Ch. 234, L. 1971. See also Sec. 89-1901.

Amendments

The 1971 amendment deleted from the end of the section "bearing interest at the rate not to exceed six per centum per annum."

89-1705. (7212) Details relating to bonds. (1) All bonds issued under the provisions of this act shall be payable in gold coin of the United States, of the standard weight and fineness [fineness] existing at the time of the issue; and shall run for a period not longer than forty (40) years from their date, but may contain a clause providing for their prior redemption and payment, at the option of the board of commissioners of the district, on any interest payment date after five (5) years from their date. Instead of straight maturity bonds, bonds may be issued to mature serially at such times and in such amounts as the board of commissioners shall determine, but no bonds so issued shall run for a longer period than forty (40) years from the date of issue. Said bonds shall bear interest from their date until paid, payable annually or semiannually, the installments of interest to date of maturity of principal to be evidenced by appropriate coupons attached to each bond. Said bonds and interest coupons shall be payable at such place or places, within or without the state of Montana, as the board of commissioners shall prescribe.

(2) Such bonds shall be of such denomination or denominations, and in such form, as the board of commissioners shall prescribe. An issue of bonds is hereby defined to be all the bonds issued in accordance with a resolution or order of the board of commissioners. Each issue of the

bonds of a district shall be numbered consecutively as authorized, and the bonds of each issue shall be numbered consecutively. The board of commissioners shall fix the date of said bonds, or may divide any issue into two (2) or more divisions and fix different dates for the bonds of each respective division. The date of any bond must be subsequent to the order or resolution authorizing it and prior to its delivery to a purchaser from the district.

(3) and (4). * * * [Same as parent volume.]

History: En. Sec. 42, Ch. 146, L. 1909; amd. Sec. 1, Ch. 17, Ex. L. 1919; re-en. Sec. 7212, R. C. M. 1921; amd. Sec. 8, Ch. 157, L. 1923; amd. Sec. 12, Ch. 260, L. 1959; amd. Sec. 33, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "at a rate not to exceed six per centum per annum" after "until paid" in the third sentence of subsection (1); and made minor changes in style.

Compiler's Notes

The compiler has inserted the bracketed word "fineness." This was the term used prior to 1971 amendment.

89-1706. (7213) Liens of bonds. All bonds issued hereunder and all amounts to be paid to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 89-1301 provided, shall be a lien upon all the lands originally or at any time included in the district for the irrigation and benefit of which said irrigation district was organized and said bonds were issued, and for the benefit of which such contract between the district and the United States was made, except upon such lands as may at any time be included in such district on account of the exchange or substitution of water under the provisions of section 89-1611, if any there be; and all such lands shall be subject to a special tax or assessment for the payment of the interest on and principal of said bonds; and all amounts to be paid to the United States under any such contract between the district and the United States, and said special tax or assessment, shall constitute a first and prior lien on the land against which levied, to the same extent and with like force and effect as taxes levied for state and county purposes.

All liens herein created shall remain upon the lands for a period of eight (8) years after the date of maturity of the obligation; thereafter, the lands and the titles thereto shall be free from any such liens.

History: En. Sec. 43, Ch. 146, L. 1909; amd. Sec. 12, Ch. 145, L. 1915; amd. Sec. 8, Ch. 153, L. 1917; amd. Sec. 8, Ch. 116, L. 1919; re-en. Sec. 7213, R. C. M. 1921; amd. Sec. 1, Ch. 190, L. 1973.

Amendments

The 1973 amendment added the second paragraph.

89-1708. (7215) Delivery of bonds—disposition of proceeds. In the event that bonds are sold for cash, they shall be delivered by the board of commissioners to the county treasurer of the county wherein the office of the district is located, who shall deliver them to the purchaser upon receipt of the purchase price therefor, and after making a complete record of the same. Delivery of the bonds sold may be made by the county treasurer to the purchaser at any place or places within or without the

state of Montana, and said county treasurer may receive the proceeds of the sale of said bonds at said place or places of delivery. The county treasurer shall thereupon place the proceeds of said sale to the credit of said district; and the same shall be paid out by the county treasurer only upon the written order of the board of commissioners, signed by the president and secretary under the seal of the district. Said proceeds shall be expended for the purpose or purposes for which said bonds were issued, and for no other. Provided, in case any portion of the funds realized from the sale of bonds are not needed immediately for the purpose for which said bonds were issued, the board of commissioners whenever, in its judgment, the same may be to the best interests of the district, shall have the power and authority to direct the investment of such funds, and any other surplus funds of the district, or any portion thereof, in interest-bearing securities of the United States, or of the state of Montana, or in interest-bearing certificates of deposit of national or state banks approved by the state superintendent of banks; provided, however, that in the event of such deposit said banks shall first furnish an indemnity bond to be approved by said board of commissioners and the state superintendent of banks. The county treasurer shall transfer to the credit of the district, and place to the credit of such fund or funds as the board of commissioners may direct, all interest received upon money or securities of the district entrusted to his care.

History: En. Sec. 45, Ch. 146, L. 1909; re-en. Sec. 7215, R. C. M. 1921; amd. Sec. 10, Ch. 157, L. 1923; amd. Sec. 1, Ch. 258, L. 1967.

Amendments

The 1967 amendment inserted "and any other surplus funds of the district" after "investment of such fund" in the fifth sentence.

89-1712. (7226.1) Refunding bonds. Any irrigation district may issue refunding bonds.

History: En. Sec. 1, Ch. 155, L. 1929; amd. Sec. 19, Ch. 315, L. 1974.

Amendments

The 1974 amendment deleted a second

clause providing that an act relating to irrigation districts under the jurisdiction of the public service commission applied to such refunding bonds. For prior text, see parent volume.

CHAPTER 18—IRRIGATION DISTRICTS—TAXES AND ASSESSMENTS

- Section 89-1801. Tax or assessment to pay bonds and interest.
 89-1804. Annual tax levy—apportionment when tracts divided.
 89-1811. County treasurer as custodian of district funds.
 89-1812. Collection of taxes or assessment.

89-1801. (7232) Tax or assessment to pay bonds and interest. (1).
 * * * [Same as parent volume.]

(2) It shall be the duty of the board of commissioners of the district, in the order or resolution authorizing and directing the issuance of bonds of the district, mentioned in section 89-1703, to provide for the annual levy and collection of a special tax or assessment upon all the lands included in the district and subject to taxation and assessment as aforesaid, sufficient in amount to meet the interest on said bonds promptly when

and as the same accrues, and to discharge the principal thereof at their maturity, or respective maturities, and to meet all payments due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 89-1301 provided, at the times such payments by such contract become due and payable. Where straight maturity bonds are issued, it shall be the duty of the board of commissioners of the district to create and maintain a sinking fund sufficient to pay and discharge said bonds at maturity. If said bonds shall be issued for twenty (20) years or less, there shall be annually levied for such sinking fund a special tax or assessment, as aforesaid, sufficient to produce a net amount represented by the quotient found by dividing the aggregate amount of the principal of the bonds by the number of years the bonds have to run; but if said bonds are issued for more than twenty (20) years, then it shall not be necessary to levy a special tax or assessment for sinking fund until the twentieth year prior to the maturity of the bonds, at which time and each year thereafter there shall be levied and collected a special tax or assessment sufficient to produce a net sum equal to one-twentieth ($1/20$) part of the aggregate amount of the principal of the bonds.

(3). * * * [Same as parent volume.]

(4) In the event that for any reason any special tax or assessment hereinabove provided for cannot or shall not be levied and collected in time to meet any interest falling due on any bonds issued hereunder, then the board of commissioners shall have the power and authority, and it shall be their duty, to provide for and pay such interest when due, either out of any of the funds in hand in the treasury of the district not otherwise appropriated, or by warrants drawn against the next district tax or assessment levied or to be levied. Said warrants shall be in addition to those mentioned in section 89-1701.

(5). * * * [Same as parent volume.]

History: En. Sec. 46, Ch. 146, L. 1909; amd. Sec. 14, Ch. 145, L. 1915; re-en. Sec. 7232, R. C. M. 1921; amd. Sec. 34, Ch. 234, L. 1971.

may bear interest at a rate not to exceed six per centum per annum)" after "or by warrants" near the end of the first sentence of subsection (4); and made minor changes in style.

Amendments

The 1971 amendment deleted "(which

89-1804. (7235) **Annual tax levy—apportionment when tracts divided.**
(1) and (2). * * * [Same as parent volume.]

(3) Whenever the board of commissioners has provided for the payment of any indebtedness of the district by levy of a special tax or assessment, and thereafter makes provision for the payment of said indebtedness by the issuance of bonds, said board may cancel any portion or all of said levy theretofore made to raise funds to pay said indebtedness; and whenever said board has provided for the payment of any indebtedness of the district by the authorization of bonds and the levy of a special tax or assessment to pay the principal of and interest on said bonds, the [and] thereafter cancels said issue of bonds as provided for in section 89-1707

said board may cancel any portion or all of said levy theretofore made to raise funds to pay the principal of or interest on said bonds so canceled, and refund to the respective persons paying the same the funds, if any, in the custody of the county treasurer collected for the purpose of meeting the principal of and interest on such bonds so canceled.

(4) Any land or lands which may for any reason have escaped assessment in any previous year or years may be assessed or listed for the omitted years and omitted charges, in any subsequent year at the time of the making of the assessment in and for such subsequent year, but no such assessment shall be made later than three years after the occurrence of such omission.

History: En. Sec. 49, Ch. 146, L. 1909; amd. Sec. 16, Ch. 145, L. 1915; amd. Sec. 1, Ch. 148, L. 1921; re-en. Sec. 7235, R. C. M. 1921; amd. Sec. 19, Ch. 157, L. 1923; amd. Sec. 2, Ch. 135, L. 1961; amd. Sec. 1, Ch. 51, L. 1973.

Amendments

The 1973 amendment deleted subdivision (3) and renumbered former subdivisions (4) and (5) as subdivisions (3) and (4).

89-1811. (7239) County treasurer as custodian of district funds. The county treasurer of the county wherein the office of an irrigation district is located shall be the custodian of all funds belonging to the district, and he shall pay out such funds upon the order of the board of commissioners, except as to payments on bonds and interest, for which no order shall be necessary. Where any portion of the funds belonging to a district have been collected for the purpose of establishing a reserve fund, the county treasurer shall pay such portion to the district on order of the district's board of commissioners, who shall have authority to invest the same in state or federal bonds or in savings certificates of institutions insured by the federal deposit insurance corporation. Where moneys of a district in the United States contract fund established pursuant to section 89-1809 are in excess of those needed to pay a district's next succeeding annual contract obligation or obligations to the United States, such excess, or any part thereof, may, upon order of the district's board of commissioners, and with the consent of the United States officer administering the contract for which the contract fund has been established, be paid to the district for use in meeting other obligations of the district. Such orders of the board of commissioners shall be signed by the president and secretary of the board, and shall bear the official seal of the district.

History: En. Sec. 53, Ch. 146, L. 1909; amd. Sec. 18, Ch. 145, L. 1915; re-en. Sec. 7239, R. C. M. 1921; amd. Sec. 1, Ch. 137, L. 1971.

Compiler's Notes

The reference to section 89-1809 appearing in the third sentence of this section is apparently erroneous. The probable intent was to refer to subdivision (3) of section 89-1801.

Amendments

The 1971 amendment divided the former first sentence into the present first and fourth sentences; deleted "and pay-

ments under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States, as in section 89-1301 provided" before "for which no order shall be necessary" at the end of the first sentence; inserted new second and third sentences; deleted a final sentence reading "Where such orders are for the payment of money for construction work, the same shall be accompanied by and attached to the written estimate of the engineer in charge of such construction work"; and made minor changes in phraseology.

89-1812. (7240) Collection of taxes or assessment. On or before the third Monday in August of each year the board of commissioners shall furnish the agent of the department of revenue in each county in which any of the lands of the district are situate, a correct list of all the district lands in such county, together with the amount of the total taxes or assessments against said lands for district purposes. The agent of the department of revenue in each county shall immediately thereafter cause said assessment roll to be entered in the assessment book of said county for each year, and prior to the delivery of the assessment book to the county treasurer. The county treasurer of each county shall collect such taxes or assessments in the same manner and at the same time as county and state taxes.

History: En. Sec. 54, Ch. 146, L. 1909; amd. Sec. 2, Ch. 96, L. 1919; re-en. Sec. 7240, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1945; amd. Sec. 65, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "agent of the department of revenue" for "county assessor" in two places in order to implement article VIII, section 3 of the 1972 constitution.

89-1832. (7250) Sale or transfer of lands.

Highway Condemnation

State highway commission acquiring land for highway purposes is not liable for assessment and taxes by irrigation district since land taken will no longer benefit from services provided by district,

notwithstanding contention of district that takings so reduced total irrigable acreage of district as to increase per-acre cost of operation and maintenance of remainder. *Helena Valley Irrig. Dist. v. State Highway Commission*, 150 M 192, 433 P 2d 791.

CHAPTER 19—IRRIGATION DISTRICTS—LIMITATION OF INDEBTEDNESS—VALIDATION OF WARRANTS—BANKRUPTCY—FINANCIAL AID

Section 89-1905. Conveyance of property of irrigation districts to department of natural resources and conservation.

89-1905. Conveyance of property of irrigation districts to department of natural resources and conservation. In addition to all other powers heretofore granted any irrigation district, existing under the laws of Montana, for the purpose of securing financial aid in any form from the department of natural resources and conservation, an irrigation district may convey, assign, transfer and set over to the department all or any part of its property, including all water rights, rights of way, and easements for reservoirs, reservoir sites, canals, ditches, laterals, and head gates, as may be required by the department as a condition to furnishing such financial aid or assistance.

History: En. Sec. 1, Ch. 191, L. 1937; amd. Sec. 166, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to "department of natural resources and conservation" for references to "state water conservation board"; and made minor changes in phraseology.

CHAPTER 21—IRRIGATION DISTRICTS—APPEALS—
MISCELLANEOUS PROVISIONS

Section 89-2107. Records—inspection—fees—reports.

89-2107. (7260) Records—inspection—fees—reports. (1) The board of commissioners shall keep a complete book and record of the accounts, records, contracts, securities, minutes of meetings, and other matters of every kind pertaining to or belonging to the irrigation district, in the form prescribed by the department of intergovernmental relations. The department of intergovernmental relations shall prescribe forms for the use of irrigation districts and examine them as provided by law for the examination of the affairs of county officers. The books and records shall be open to the inspection of any landowner of the district the same as other public records. The failure of the board of commissioners to comply with this section is grounds for removal from office, and the county attorney of any county in which the irrigation district is situated shall prosecute ouster proceedings against any commissioner or commissioners. The cost of the proceedings is a charge against the irrigation district, and shall be paid as are other bills against the districts.

(2) If a district is appointed fiscal agent of the United States, or by the United States is authorized to make collections for or on behalf of the United States in connection with a federal irrigation project, the board of commissioners or its secretary shall at any time allow any officer or employee of the United States, when acting under the orders of the secretary of the interior, to have access to all books, records, and vouchers of the district which are in possession or control of the secretary or board.

(3) The board of commissioners shall annually file with the county clerk and recorder of the county in which the district is located, within ten (10) days after March 1 of each year, a sworn report showing the assets and liabilities of the district, the amount of money received during the preceding year, and the amount spent during that time, and shall publish the report at least once in a newspaper of the county.

(4) The department of intergovernmental relations shall notify the secretaries of the districts of the time of presenting the books and records at the courthouse for examination.

History: En. Sec. 65, Ch. 146, L. 1909; amd. Sec. 21, Ch. 145, L. 1915; amd. Sec. 1, Ch. 212, L. 1921; re-en. Sec. 7260, R. C. M. 1921; amd. Sec. 2, Ch. 195, L. 1945; amd. Sec. 4, Ch. 256, L. 1971; amd. Sec. 105, Ch. 348, L. 1974.

Compiler's Notes

The compiler inserted subsection designation (1).

Amendments

The 1971 amendment added subsections (4) and (5) and made a minor change in style.

The 1974 amendment substituted "department of intergovernmental relations" for "state examiner" in subsections (1) and (4); and made minor changes in phraseology and punctuation.

Repealing Clause

Section 107 of Ch. 348, Laws of 1974 read "Sections 1-201, 1-202, 1-312, 1-313, 1-317, 1-321, 1-504, 1-805, 1-926, 11-3253, 16-1225, 16-1227, 16-2925, 32-4603, 32-4604, 82-3703, 82-3704, 82-3707, 82-3709, 82A-902, 82A-903, 82A-906, R. C. M. 1947, are repealed."

CHAPTER 23—DRAINAGE DISTRICTS—COMMISSIONERS—
ELECTION—ORGANIZATION—REPORTS

Section 89-2330. Report as to assessments.

89-2330.1. Taxpayers' approval required for assessments on improvements.

89-2330.2. Improvements not assessable by districts created for drainage only.

89-2330.3. Procedures for elections in drainage districts.

89-2332. Report as to assessments against lots and corporations.

89-2333. Report as to special benefits to corporations.

89-2334. Apportionment of costs of construction.

89-2337. Commissioners to use most feasible plan—alteration by court.

89-2338. Extension or reduction of boundaries—alteration by court.

89-2348. Assessments for construction—annual installment.

89-2330. (7307) Report as to assessments. Fourth. What lands, (including improvements when improvements receive benefits) easements, irrigation ditches, cities, towns, counties, individuals and other corporations and persons should be assessed for the payment of any part of the cost of constructing the proposed drains, levees or other facilities, repairs thereto, maintenance thereof and the incidental expenses attached to the establishment of such drainage district. In apportioning such costs and expenses, the following principles shall be regarded and the following classes of property, persons, corporations and municipalities shall be assessed:

All lands which are swampy, bogged or waterlogged, and will be relieved and improved by virtue of the construction of the proposed drainage system;

All lands which are becoming, or are liable to become swampy, bogged, or waterlogged, and which the construction of the proposed drainage system will prevent from being thus affected;

All lands from which surface or seepage waters will enter or can be conducted into the proposed drainage system;

All lands and improvements thereto upon which or through which, surface or seepage water will be prevented from flowing, or can be prevented from flowing, by virtue of the construction of the proposed drainage system;

All lands or improvements which will sustain any direct benefit of any kind or character whatsoever;

All railways, whether operated by steam, electricity or otherwise, whose right of way or roadbed will be benefited or can be benefited by reason of the construction of the proposed drainage system, or levee project, and all public utilities whose easements or other facilities within the district will receive benefit from the proposed work;

All owners of irrigation ditches or canals included within said district or from which water seeps, drains or wastes to, upon or through lands included within the said district;

The county or counties which the proposed drainage system traverses, or which will be benefited as to public health, convenience, welfare or improvement of any public highway;

All incorporated cities or towns, and lands included within townsites and subdivisions, in whole or in part, directly benefited by reason of the construction of the proposed drainage system;

All of the above classes of lands, improvements, railways, public utilities, irrigation ditches, counties, cities, towns, townsites and subdivisions shall be liable to assessment for the construction of the proposed drainage system in such proportions as may seem just and equitable.

The benefits to accrue from the construction of the proposed drainage system, to a railway, county, incorporated city or town, and lands included within a platted townsite or subdivision being of a different character than those to accrue to agricultural lands shall be considered in apportioning the assessment, and also, the damages and inconvenience caused by seepage and waste waters from irrigation ditches and from the higher lands, shall be considered in apportioning the assessment to them.

Provided that in the case of the construction of levees or other flood control facilities, lands and improvements which are located or constructed at an elevation which is greater than the elevation of the design flood level which said levees or other flood control facilities are designed to protect against shall not be assessed for the payment of any part of the cost of constructing the levees or other flood control facilities nor shall such lands or improvements be assessed for the payment of any part of the cost for repairs thereto, maintenance thereof nor the incidental expenses attached to the establishment of such drainage district.

The assessment against each tract, lot, easement, town, city, county, irrigation ditch, railroad, public utility, individual or corporation owner thereof which will be benefited by the proposed work or which, in any manner, contributes to the swamped, seeped, bogged or waterlogged condition of any land within said district and the proportionate share of cost of construction of the proposed drainage system, which each of them should bear shall be shown in tabular form, the columns of which shall be headed as follows: Column 1—Owners of property assessed; 2—Description of property assessed; 3—Number of acres assessed; 4—Amount of benefits assessed; 5—Number of acres taken for right of way; 6—Value of property taken; 7—Damages; 8—Assessment for costs; which shall be known as the assessment roll. Where property, persons or corporations, public or private, contribute to the damaged condition of the lands to be reclaimed, it shall not be necessary to assess in such assessment roll the benefits to be derived by or accruing to them.

History: En. Sec. 43, Ch. 129, L. 1921; re-en. Sec. 7307, R. C. M. 1921; amd. Sec. 2, Ch. 169, L. 1929; amd. Sec. 1, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted the parenthetical phrase near the beginning of the first sentence; inserted "levees or other facilities" in the first sentence; inserted "and improvements thereto" in the clause relating to land over which surface or seepage water will be prevented

from flowing; inserted "or improvements" in the clause relating to lands which will sustain direct benefit; added "or levee project, and all public utilities whose easements or other facilities within the district will receive benefit from the proposed work" at the end of the clause relating to railways; inserted "improvements" and "public utilities" in the clause relating to lands liable to assessment; inserted the paragraph constituting a proviso; and inserted "public utility" near the beginning of the final paragraph.

Highway Commission Property

Flood control district could assess property and improvements consisting of graded land, drainage culverts, highway bridges, roadbeds, and pavement, within district's exterior boundaries, which were

owned or under lease by state highway commission. State Highway Commission v. West Great Falls Flood Control & Drainage District, 155 M 157, 468 P 2d 753, explained in 159 M 277, 496 P 2d 1143, 1151.

DECISIONS UNDER FORMER LAW**Improvements**

Special assessments for flood control purposes are limited to land exclusive of improvements. In re West Great Falls

Flood Control & Drainage Dist., 159 M 277, 496 P 2d 1143. (Decision prior to 1973 amendment.)

89-2330.1. Taxpayers' approval required for assessments on improvements. It shall require a vote of the persons on the assessment rolls in any existing district to make this law applicable to such districts.

History: En. Sec. 10, Ch. 409, L. 1973; amd. Sec. 1, Ch. 147, L. 1974.

Title of Act

An act to amend the statutes relating to the creation and operation of drainage districts in the state of Montana, and their adaptation to flood control projects, as contained in sections 89-2201 through 89-2825, R. C. M. 1947, so as to provide that when benefits of such projects are received by improvements to land, or facilities or structures placed on or in land, the benefits so received may be subject to assessment for district costs of the project; amending section 89-2330

to include improvements, facilities and structures as subject to assessment and clarifying the inclusion of public utilities in the payment of assessments; amending sections 89-2332, 89-2333, 89-2334, 89-2337, 89-2338, 89-2405, and 89-2410, R. C. M. 1947, so as to include improvements; and providing an effective date.

Amendments

The 1974 amendment deleted a second sentence which read: "Such election shall be held in the same manner as prescribed for drainage district elections in Title 89, chapter 23."

89-2330.2. Improvements not assessable by districts created for drainage only. Nothing in this act confers upon districts created for drainage purposes only the authority to levy assessments on benefits to improvements.

History: En. Sec. 11, Ch. 409, L. 1973.

Effective Date

Section 12 of Ch. 409, Laws 1973

provided the act should be in effect from and after its passage and approval. Approved March 21, 1973.

89-2330.3. Procedures for elections in drainage districts. The election provided for by section 89-2330.1 shall be governed by the following rules.

(1) Notice of the election shall be as provided in section 89-2303 except that the form of the ballot shall be as hereinafter provided.

(2) The manner of conducting the election shall be as provided in section 89-2304.

(3) The qualifications of electors shall be as provided in section 89-2305 except that, in addition to persons holding title, or evidence of title to lands within the district, any person as therein defined who does not own land within the district but has been assessed or will have his im-

provements assessed under chapter 409, Laws of 1973, or who will be assessed for benefits received, shall be entitled to one (1) vote. Commissioners shall prepare a list of such persons and give them notice as provided in section 89-2303.

(4) The commissioners of any district in existence prior to the effective date of chapter 409, Laws of 1973, who wish to hold an election to determine if the district shall be governed by chapter 409, Laws of 1973, shall at any regular or special meeting adopt a resolution calling for an election to determine whether or not the voters of said district wish to be governed by chapter 409, Laws of 1973. The resolution shall contain a short summary of the changes made by chapter 409, Laws of 1973 and shall include the summary as part of the notice provided for by section 89-2303. In addition, the commission shall provide copies of chapter 409, Laws of 1973 to any person interested in obtaining a copy of the same and the notice of the persons in the district calling the election shall describe where and how copies may be obtained. The commissioners may authorize a reasonable charge for providing said copies, not to exceed twenty cents (\$.20) per page.

(5) The ballot shall include the summary as provided for in the preceding paragraph and the form of the ballot shall conform, as closely as possible, to that set forth in section 37-106.

(6) A simple majority of those who cast valid ballots shall determine the outcome of the election.

History: En. 89-2330.3 by Sec. 2, Ch. 147, L. 1974.

Title of Act

An act to clarify the election provisions contained in section 89-2330, R. C. M. 1947; amending section 89-2330.1, R. C. M. 1947, relating to elections in drainage districts; and providing an effective date.

Effective Date

Section 3 of Ch. 147, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

89-2332. (7309) Report as to assessments against lots and corporations. If the cost of construction of any particular part of the work so proposed to be done should be assessed upon any particular tract or tracts, lot or lots of land, including improvements where the same are benefited, or upon any corporation or corporations, the commissioners shall so specify, and in their report they shall fix and determine the sums which should be assessed against said tracts, lots, and corporations, and assess such sum against said tracts, lots, and corporations.

History: En. Sec. 45, Ch. 129, L. 1921; re-en. Sec. 7309, R. C. M. 1921; amd. Sec. 2, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted "including improvements where the same are benefited."

89-2333. (7310) Report as to special benefits to corporations. And if any individual, association of individuals or corporation would, in the judgment of said commissioners, derive special benefits from the whole or any part of such proposed work, the commissioners shall so report and

assess those benefits and assess against the recipient thereof its proportionate share of the costs of said proposed work. The word "corporation," whenever in this act contained, shall be construed to include:

1 to 7. * * * [Same as parent volume.]

History: En. Sec. 46, Ch. 129, L. 1921; re-en. Sec. 7310, R. C. M. 1921; amd. Sec. 3, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted "indi-

vidual, association of individuals or" near the beginning of the first sentence; and substituted "the recipient thereof" for "the same" near the end of the first sentence.

89-2334. (7311) Apportionment of costs of construction. They shall apportion and assess the part of this "cost of construction," not assessed as above, against the several benefited tracts, lots, (including improvements when the same are benefited) and easements in said drainage district, in proportion to the benefits which they have assessed against the same, by setting down opposite each tract, lot, or easement the sum which they assess against the same for construction. The assessments which together make up the cost of construction, as above defined, are herein referred to as "assessments for construction."

History: En. Sec. 47, Ch. 129, L. 1921; re-en. Sec. 7311, R. C. M. 1921; amd. Sec. 4, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted "(including improvements when the same are benefited)."

89-2337. (7314) Commissioners to use most feasible plan—alteration by court. The commissioners shall not be confined to the points of commencement, routes, or termini of the drains or ditches, or the number, extent, or size of the same, or the location, plan, or extent of any levee, ditch, or other work, as proposed by the petitioners, but shall locate, design, lay out, and plan the same in such manner as to them shall seem best, to promote the public health or welfare, and to drain, or to protect the lands, including improvements, of the parties interested with the least damage and the greatest benefit to all lands affected thereby. And any plan proposed by the commissioners may, on the application of any person interested, on the hearing hereinafter provided for, or on the application of the commissioners, be altered by the court, by written order, in such manner as shall appear to the court to be just.

History: En. Sec. 50, Ch. 129, L. 1921; re-en. Sec. 7314, R. C. M. 1921; amd. Sec. 5, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted "including improvements" following "or to protect the lands" near the end of the first sentence.

89-2338. (7315) Extension or reduction of boundaries—alteration by court. If the commissioners find that the proposed district, as described in the petition filed, will not embrace all of the lands, including improvements, that will be benefited by the proposed work, or that it will include lands that will not be benefited and are not necessary to be included in said district for any purpose, they shall extend or contract the boundaries of the proposed district so as to include or exclude all such lands, or im-

provements, as the case may be; and the boundaries adopted and reported by them may, upon the hearing of their report, as hereinafter provided, upon their application, or that of any person interested, be altered by the court in such manner as shall appear to be just; provided, that the alteration of boundaries as aforesaid shall not have the effect of so far enlarging or contracting the proposed district as to render such petition void or dismissable. Said report shall be filed with the clerk of the court.

History: En. Sec. 51, Ch. 129, L. 1921;
re-en. Sec. 7315, R. C. M. 1921; amd.
Sec. 6, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted the references to improvements in the first sentence.

89-2348. (7325) Assessments for construction—annual installment. At the time of the confirmation of such assessments, it shall be competent for the court to order the assessment for construction of new work, to be paid in not more than fifteen (15) annual installments, of such amounts and at such times as will be convenient for the accomplishment of the proposed work, or for the payment of the principal and interest of such notes or bonds of said district, as the court shall grant authority to issue, for the construction of new work. The court shall also, by such order, fix a date on which the first installment of the assessments for construction shall become due, not more than five (5) years after the date of the order, and each of said installments shall draw interest at the rate fixed by the court in accordance with law from the date of said order.

History: En. Sec. 61, Ch. 129, L. 1921;
re-en. Sec. 7325, R. C. M. 1921; amd. Sec.
35, Ch. 234, L. 1971.

Amendments

The 1971 amendment substituted "fixed by the court in accordance with law" for "of seven per cent per annum" near the end of the section; and made a minor change in style.

89-2349. (7326) Lien of assessments—payments of assessments, etc.

Highway Commission Property

Flood control district could assess property and improvements consisting of graded land, drainage culverts, highway bridges, roadbeds, and pavement, within exterior boundaries of district, which were

owned or under lease by state highway commission. State Highway Commission v. West Great Falls Flood Control & Drainage District, 155 M 157, 468 P 2d 753, explained in 159 M 277, 496 P 2d 1143, 1151.

CHAPTER 24—DRAINAGE DISTRICTS—TAXES AND ASSESSMENTS

- Section 89-2401. District taxes—how certified and collected.
89-2405. Procedure on failure to certify assessments.
89-2410. Additional assessments, procedure to levy.

89-2401. (7329) District taxes—How certified and collected. On or before the third Monday in August of each year the commissioners shall certify to the agent of the department of revenue in each county wherein the lands of the district are situate, a correct list of all the district lands in such county and the owners thereof, together with a statement of the amount of the total tax or assessment against said lands for district

purposes for that year. The agent of the department of revenue in each county shall immediately thereupon cause said assessment roll to be entered in the assessment book of said county for each year and prior to the delivery of the assessment book to the county treasurer. The county treasurer of each county shall collect such taxes or assessments at the same time and in the same manner as county and state taxes.

History: En. Sec. 65, Ch. 129, L. 1921; re-en. Sec. 7329, R. C. M. 1921; amd. Sec. 1, Ch. 12, L. 1945; amd. Sec. 66, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "agent of the department of revenue in" for "county assessor of" in two places in order to implement article VIII, section 3 of the 1972 constitution.

89-2405. (7333) Procedure on failure to certify assessments. When commissioners shall fail to certify to the county treasurer of the proper county any one or more drainage assessments for construction or repair, or additional assessment against any lands (including improvements where benefited) in said district, at the proper time, they may certify the same to the county treasurer at any time thereafter, whether in the same or any subsequent year.

History: En. Sec. 69, Ch. 129, L. 1921; re-en. Sec. 7333, R. C. M. 1921; amd. Sec. 7, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted the parenthetical phrase relating to improvements benefited.

89-2410. (7338) Additional assessments, procedure to levy. If in the first assessment for construction the commissioners shall have reported to the court a smaller sum than is needed to complete the work of construction, or if in any year an additional sum is necessary to pay the lawful indebtedness of said drainage district, further or additional assessments on the land (including improvements where benefited) and corporations benefited, proportioned on the last assessment of benefits which has been approved by the court, shall be made by the commissioners of said drainage district under the order of the court or presiding judge thereof; provided, however, that the total assessments for original construction and any additional assessments, other than for maintenance, incidental expense, and interest on bonds, shall, in no event, exceed the total assessments of benefits as provided in section 89-2330. Notice of the hearing of the application for such additional assessment shall be published at least once each week for three consecutive weeks in one newspaper published in each county in which said lands, or any part thereof, within said district are situated; which further or additional assessment may be made payable in installments as specified in section 89-2348, and shall be treated and collected in the same manner as the original assessments for construction confirmed by the court in said drainage district.

History: En. Sec. 74, Ch. 129, L. 1921; re-en. Sec. 7338, R. C. M. 1921; amd. Sec. 8, Ch. 409, L. 1973.

Separability Clause

Section 9 of Ch. 409, Laws 1973 read "The provisions of this act shall be severable, and if any of its provisions, sections, or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Amendments

The 1973 amendment inserted the parenthetical phrase relating to improvements.

CHAPTER 25—DRAINAGE DISTRICTS—BONDS—
REFUNDING INDEBTEDNESS

Section 89-2501. Borrowing money—procedure to issue notes or bonds.

89-2502. Refunding indebtedness of district.

89-2501. (7343) **Borrowing money — procedure to issue notes or bonds.** (1) The commissioners may borrow money not exceeding the amount of assessment for the cost of construction and additional assessments, as provided in section 89-2350, unpaid at the time of borrowing, for the construction or repair of any work which they shall be authorized to construct or repair, or for the payment of any indebtedness which they may have lawfully incurred, and may issue notes or negotiable coupon bonds on the district, bearing interest, payable semiannually and not running beyond one (1) year after the payment of the last installment of the assessment, on account of which money is borrowed, shall fall due.

(2) Before the issuance of said notes or bonds, the commissioners shall pass a resolution providing for the issuance of such notes or bonds, which said resolution shall fix the rate of interest which said notes or bonds shall bear, the time of payment and, if redeemable before maturity, the date thereof, and shall prescribe the denominations, not exceeding one thousand dollars (\$1,000), and form thereof, and may provide that both the principal and interest of said notes and bonds shall be payable at some convenient banking house, or trust company's office, to be named in said notes or bonds; such notes or bonds, and the coupons attached thereto, shall bear the signatures of the president and the secretary of the drainage district; and the corporate seal of the drainage district shall be affixed to each of the notes or bonds.

(3) Upon execution, the notes or bonds shall be deposited with the county treasurer, who shall register the same in a book for that purpose, which shall show the number and amount of each note or bond, its date, the date payable and redeemable, where payable, the person to whom issued, and upon sale of the said notes or bonds, the county treasurer shall deliver the same to the person or persons to whom sold, upon their making payment for the same; said notes or bonds may be sold by the commissioners at either public or private sale, either with or without advertisement as they may deem it to the best interests of the district; said notes or bonds shall not be sold at less than ninety per cent (90%) of their face value; said notes or bonds shall not be held to make the commissioners personally liable, but shall constitute a lien upon the assessments for the repayment of the principal and interest of such notes or bonds.

(4). * * * [Same as parent volume.]

History: En. Sec. 79, Ch. 129, L. 1921; re-en. Sec. 7343, R. C. M. 1921; amd. Sec. 13, Ch. 260, L. 1959; amd. Sec. 36, Ch. 234, L. 1971.

Amendments

The 1971 amendment, deleted "at a rate not to exceed six per centum per annum"

after "bearing interest" in the latter part of subsection (1); deleted "not exceeding six per centum per annum, payable semiannually" after "interest which said notes or bonds shall bear" near the beginning of subsection (2); and made minor changes in style.

89-2502. (7344) **Refunding indebtedness of district.** And the court may, on the petition of the commissioners, authorize them to refund any lawful indebtedness of the district by taking up and canceling all of its outstanding notes and bonds, as fast as they become due, or before, if the holders thereof will surrender the same, and issuing in lieu thereof new notes or bonds of such district, payable in such longer time as the court shall deem proper, not to exceed in the aggregate the amount of all notes and bonds of the district then outstanding, and the unpaid accrued interest thereon.

History: En. Sec. 80, Ch. 129, L. 1921;
re-en. Sec. 7344, R. C. M. 1921; amd. Sec.
42, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted from the end of the section "and bearing interest not exceeding six per cent per annum."

**CHAPTER 29—APPROPRIATION AND REGULATION OF
GROUND WATER**

- Section 89-2911. Definitions.
89-2914. Designation or modification of controlled ground water areas—notice of hearings.
89-2915. Limiting withdrawals—hearing and order.
89-2916. Administrative finding of priorities.
89-2917. Scope of administrative hearing.
89-2918. Permit required to appropriate in controlled area.
89-2926. Waste and contamination of ground water prohibited—exception—duties of department.
89-2927. Inspection—entry on premises.
89-2928.1. Well logs.
89-2930. Duty of county attorneys and attorney general.
89-2931. Rules.
89-2932. Ground water supervisors—duties.
89-2933. Investigations.
89-2934. Power to administer oaths and subpoena witnesses.
89-2934.1. Hearings before board—Administrative Procedure Act.
89-2936. Penalties.

89-2911. Definitions. Unless the context requires otherwise, in this chapter:

(a) **"Ground water"** means any fresh water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water. Fresh water shall be deemed to be water fit for domestic, livestock or agricultural use. The department, after notice and hearing, may fix definite standards for determining fresh water in any controlled ground water area or subarea of the state.

(b) and (c) * * * [Same as parent volume.]

(d) **"Beneficial use"** means a use of water for the benefit of the appropriator, other persons or the public, including, but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses.

(e) **"Person"** means an individual, association, partnership, corporation, state agency, political subdivision, and the United States or any agency thereof.

(f) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(g) * * * [Same as parent volume.]

(h) "Board" means the board of natural resources and conservation provided for in section 82A-1509.

History: En. Sec. 1, Ch. 237, L. 1961; amd. Sec. 16, Ch. 280, L. 1965; amd. Sec. 1, Ch. 307, L. 1971; amd. Sec. 40, Ch. 452, L. 1973; amd. Sec. 167, Ch. 253, L. 1974.

Amendments

The 1965 amendment substituted "state water conservation board" for "state engineer" in paragraph (f).

The 1971 amendment substituted "Montana water resources board" for "state water conservation board" in subdivision (f); added a subdivision (h) defining "notice of appropriation," a subdivision (i) defining "notice of completion" and a subdivision (j) defining "declaration of vested ground water rights"; and made minor changes in punctuation and phraseology.

The 1973 amendment inserted "Unless the context requires otherwise" at the beginning of the section; deleted "or regulations issued hereunder" from the end of the preliminary clause; inserted "and which is not a part of that surface water"

at the end of the first sentence in subdivision (a); substituted subdivision (d) for a subdivision defining "beneficial use" as "any economically or socially justifiable withdrawal or utilization of water"; substituted "an individual" for "any natural person" in subdivision (e); substituted "state agency, political subdivision" in subdivision (e) for "municipality, irrigation district, the state of Montana or any political subdivision or agency thereof"; substituted subdivision (f) for a subdivision defining "administrator" as "the Montana water resources board"; deleted the subdivisions (h), (i) and (j) added by the 1971 amendment; added a new subdivision (h); and made minor changes in phraseology.

The 1974 amendment substituted "department" for "administrator" in subdivision (a); rewrote subdivision (f) which defined "administrator" as the "department of natural resources and conservation provided for in Title 82A, chapter 15"; and made a minor change in phraseology.

89-2912, 89-2913. Repealed.

Repeal

Sections 89-2912, 89-2913 (Secs. 2, 3, Ch. 237, L. 1961; Sec. 1, Ch. 21, L. 1965; Sec. 2, Ch. 307, L. 1971), relating to ap-

propriations of ground water, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-880 to 89-888.

89-2914. Designation or modification of controlled ground water areas—notice of hearings. Designation or modification of an area of controlled ground water use may be proposed to the board by the department on its own motion or by petition signed by at least twenty (20) or one-fourth ($\frac{1}{4}$) (whichever is the lesser number) of the users of ground water in a ground water area wherein there is alleged to be factual data showing: (1) that ground water withdrawals are in excess of recharge to the aquifer or aquifers within such ground water area; (2) that excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the ground water area; or (3) that significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of type of use are in progress within the ground water area.

When such a proposal is thus made, the department shall fix a time and place for a hearing, which time shall not be less than thirty (30) days from the making of the proposal. The department, or the petitioners (as the case may be) shall publish a notice of the hearing setting forth therein

(1) the names of the petitioners;

(2) the description by legal subdivisions of all lands included in the ground water area or subarea;

(3) the purpose of the hearings and

(4) the time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal and be fully heard. Such notice of hearing shall be published at least once in each week for three successive weeks before the date of the hearing in a newspaper of general circulation in the county or counties in which the said ground water area or subarea is located. The department or the petitioners (as the case may be) shall also cause a copy of the notice together with a copy of the petition to be served by mail, not less than twenty (20) days before the hearing on all persons, other than the petitioners, who have theretofore filed a declaration of a claim or notice of appropriation to withdraw ground water from the particular ground water area or subarea involved in the proceedings. A copy of the notice together with a copy of the proposal shall be mailed to each person at his last known address and such service shall be complete upon depositing it in the post office, postage prepaid, addressed to each person on whom it is to be served. Publication and mailing of such notice, as prescribed herein, when completed shall be deemed to be sufficient notice of such hearing to all interested persons.

History: En. Sec. 4, Ch. 237, L. 1961;
amd. Sec. 168, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted department" for "administrator" throughout the section.

89-2915. Limiting withdrawals—hearing and order. (1) At the time set for the hearing the board, if it is satisfied that the notice of hearing has been duly published and mailed as required by section 89-2914, shall proceed to hear evidence and may consider information which the department has duly obtained under this act, and after the conclusion of the hearing shall make written findings and an order. If the board finds on the basis of the hearing and other information obtained by the department that the withdrawal of ground water in such area or subarea exceeds the safe annual yield of ground water as measured by the recharge of the area or subarea, it shall order the aggregate withdrawal of ground water from such area or subarea decreased so that it shall not exceed such annual yield. Except for domestic use, such decrease shall conform to the priority of the pertinent rights and shall prevail for the term of shortage in the available supply. The department may enforce the order; require persons to cease such excessive withdrawals in reverse order of their priority of rights; and bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(2) The order of the board shall be published and mailed by the department in the manner and for the length of time as prescribed by section 89-2914 for the publication and mailing of the notice of hearing except that a copy of the written findings of the board shall be mailed instead of a copy of the proposal, and except further, that a copy of the

order together with a copy of the written findings shall be mailed to each petitioner at his last known address. Upon publication and mailing of such order, as prescribed herein, the order shall be final and conclusive unless an appeal therefrom is taken.

(3) Once a petition has been filed and an order has been made limiting the withdrawal of ground water from a particular ground water area or subarea, as provided in this section, the board may after notice and hearing as heretofore provided in this section, modify or revoke its order upon a showing by any interested party and a finding by the board that conditions have materially changed since the prior order. While a matter is pending before the board, the department may restrict further development of the subarea.

History: En. Sec. 5, Ch. 237, L. 1961; amd. Sec. 41, Ch. 452, L. 1973; amd. Sec. 169, Ch. 253, L. 1974.

Amendments

The 1973 amendment numbered the subsections; substituted references to the board for references to the administrator in relation to quasi-legislative functions; inserted "on the basis of the hearing and

other information obtained by the administrator" near the beginning of the second sentence in subsection (1); and deleted "within the time and in the manner prescribed in section 89-2920" from the end of subsection (2).

The 1974 amendment substituted "department" for "administrator" throughout the section; and made minor changes in phraseology.

89-2916. Administrative finding of priorities. (1) Any person claiming a right to withdraw ground water (whether or not from a controlled area) or the department at its discretion, may initiate a hearing by the department for the ascertainment of all existing rights to the use of the ground water in the ground area or subarea involved. The department shall produce at the hearing a map showing and describing all the lands included in the ground water area or subarea, and copies of all data upon which any prior designation or modification order was based. The waiving or assignment of rights by mutual agreement for either temporary or extended periods, shall not modify or cancel the relative priorities of the rights.

(2) Within any designated or modified controlled ground water area or subarea wherein oil and/or gas wells produce either fresh, brackish, or saline water associated with oil and gas, the volume of production of which is dependent entirely on the oil and/or gas withdrawals, such production of water shall be under the prior jurisdiction of the board of oil and gas conservation. Hearings pertaining to the production, use, or disposal of water from those wells shall be held by that board in accordance with the procedures established by that board. The department may petition the board of oil and gas conservation for hearings in regard to those operations and it shall be notified by the board of oil and gas conservation of those hearings instigated by other parties, when those hearings involve operations within a controlled ground water area or subarea.

(3) Hereafter, in a hearing for the ascertainment and finding of priorities, involving rights to the use of ground waters, all appropriators of ground water or of surface water in the particular controlled area, or subarea shall be included as parties and notified in the manner provided in section 89-2914.

History: En. Sec. 6, Ch. 237, L. 1961; amd. Sec. 170, Ch. 253, L. 1974.

Amendments

The 1974 amendment inserted the subsection designations; substituted "depart-

ment" for "administrator" throughout the section; substituted references to "board of oil and gas conservation" for references to "oil and gas conservation commission" in subsection (2); and made minor changes in phraseology.

89-2917. Scope of administrative hearing. (1) In a hearing for the ascertainment and finding of priorities to the use of ground water, the department in its finding and order shall confirm, modify, alter or amend any prior order designating and modifying the boundaries of the ground water area or subarea involved, as the evidence justifies, shall determine the priority of rights and the quantity of ground water to which each appropriator, who is a party to the proceedings, is entitled in the particular ground water area or subarea, and shall find and determine any other matter necessary to the ascertainment of priorities of such existing rights to ground water. It may also determine the level below which the ground water may not be drawn by appropriators. The department shall act in administering and enforcing the order, as provided in section 89-2915.

(2) A copy of the order shall be recorded in the office of the clerk and recorder of each county in which the particular ground water area or subarea is located. If the order is not appealed, the order of the department shall be final and conclusive when it is published and mailed as provided for orders issued under section 89-2915.

History: En. Sec. 7, Ch. 237, L. 1961; amd. Sec. 42, Ch. 452, L. 1973; amd. Sec. 171, Ch. 253, L. 1974.

Amendments

The 1973 amendment numbered the subsections; deleted "within the time limit and otherwise as is provided in sec-

tion 89-2920" following "If the order is not appealed" in the second sentence of subsection (2); and made minor changes in phraseology.

The 1974 amendment substituted "department" for "administrator" throughout the section; and made minor changes in phraseology.

89-2918. Permit required to appropriate in controlled area. A person may appropriate ground water in a controlled area only by applying for and receiving a permit from the department in accordance with the Montana Water Use Act. The department may not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the ground water area to yield ground water within a reasonable or feasible pumping lift (in the case of pumping developments) or within a reasonable or feasible reduction of pressure (in case of artesian developments).

History: En. Sec. 8, Ch. 237, L. 1961; amd. Sec. 43, Ch. 452, L. 1973; amd. Sec. 172, Ch. 253, L. 1974.

Amendments

The 1973 amendment substituted the first sentence for six sentences requiring

a permit to appropriate ground water in a controlled area and prescribing the procedure for issuance of a permit. For prior law, see parent volume.

The 1974 amendment substituted "department" for "administrator" in two instances.

89-2919 to 89-2925. Repealed.

Repeal

Sections 89-2919 to 89-2925 (Secs. 9 to 15, Ch. 237, L. 1961), relating to hearings and appeals and to change of loca-

tion or abandonment, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-892, 89-894 and 89-2934.1.

89-2926. Waste and contamination of ground water prohibited—exception—duties of department. No ground waters shall be wasted without beneficial use. The department shall require all wells producing waters which contaminate other waters to be plugged or capped. It shall also require all flowing wells to be so capped or equipped with valves that the flow of water can be stopped when the water is not being put to beneficial use. Likewise, both flowing and nonflowing wells shall be so constructed and maintained as to prevent the waste, contamination or pollution of ground waters through leaky casings, pipes, fittings, valves, or pumps either above or below the land surface, provided however, in the following cases the withdrawal or use of ground water shall not be construed as waste under this act:

(1) the withdrawal of reasonable quantities of ground water in connection with the construction, development, testing, or repair of a well or other means of withdrawal of ground waters;

(2) the inadvertent loss of ground water owing to breakage of a pump, valve, pipe, or fitting, if reasonable diligence is shown by the person in effecting the necessary repair;

(3) the disposal of ground water without further beneficial use that must be withdrawn for the sole purpose of improving or preserving the utility of land by draining the same, or that removed from a mine to permit mining operations or to preserve the mine in good condition;

(4) the disposal of ground water used in connection with production, for reduction, smelting and milling metallic ores and industrial minerals, or that displaced from an aquifer by the storage of other mineral resources.

The department at any time may hold a hearing on its own motion, or upon petition signed by a representative body of users of ground water in any area or subarea, to determine whether the water supply within such area or subarea is used in compliance with this act.

History: En. Sec. 16, Ch. 237, L. 1961; amd. Sec. 173, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted references to "department" for references to "administrator" throughout the section.

Sealing "Shot" Hole

Sealing "shot" holes by pouring excess cuttings down into the holes and plugging the orifices by forcing an aluminum plug

into the holes so that the tops of the plugs were below plow depth, did not violate this section when the holes were only four and one-half inches in diameter and expert testimony indicated that seismographic holes tended to slough, cave and release lateral support from materials around the hole causing pressure from the weight of the earth above to force the material towards the center, sealing the hole. *Haynie v. Northern Pacific Ry. Co.*, 158 M 247, 490 P 2d 715.

89-2927. Inspection—entry on premises. The department, the state bureau of mines and geology, or the department of health and environmental sciences, may enter on the property of any appropriator, where a well is situated, at any reasonable hour of the day, for the purpose of investigating any matters in connection with this act.

History: En. Sec. 17, Ch. 237, L. 1961; amd. Sec. 174, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "The

department * * * may enter" for "The administrator or any assistant, any representative of the state bureau of mines and geology or the state board of health, shall have the right of entry."

89-2928.1. Well logs. Within sixty (60) days after any well is completed, the driller shall file with the department a well log report on a form provided by the department at its offices and at the offices of the county clerks and recorders. The department may return the report for refileing if it is incomplete or incorrect. The department shall provide a copy of the complete and correct well log to the Montana bureau of mines and geology.

History: En. 89-2928.1 by Sec. 44, Ch. 452, L. 1973; amd. Sec. 175, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "administrator" throughout the section.

89-2930. Duty of county attorneys and attorney general. The county attorneys and the attorney general of the state shall perform such legal services and bring such legal proceedings in carrying out the purpose of this act within their respective counties as the department shall request.

History: En. Sec. 20, Ch. 237, L. 1961; amd. Sec. 176, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "administrator."

89-2931. Rules. The board may prescribe and the department shall enforce reasonable rules concerning and providing for inspection and entry for that purpose by the department; the circumstances under which the construction of weirs or other measuring devices may be required; and such other similar matters as are required by, and consistent with the administration of this act.

History: En. Sec. 20, Ch. 237, L. 1961; amd. Sec. 177, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "The board may prescribe * * * reasonable

rules" for "The administrator may prescribe and enforce reasonable rules and regulations" and substituted "department" where used the second time for "administrator or his official representative."

89-2932. Ground water supervisors—duties. The department may appoint one or more ground water supervisors for each designated controlled area, and may appoint one or more ground water supervisors at large. Within their respective jurisdictions and under the direction of the department, the ground water supervisors and supervisors at large shall supervise the withdrawal of ground water and the carrying out of orders issued by the department.

History: En. Sec. 22, Ch. 237, L. 1961; amd. Sec. 178, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "administrator" throughout the section.

89-2933. Investigations. (1) The department shall compile information for the purpose of enabling it to comply with this act. In compiling this information, the department shall make use of investigations, technical personnel, surveys, and information available from the Montana bureau of mines and geology, the United States geological survey, the board of oil and gas conservation, the department of health and environmental sciences, and any other private, state, or governmental agency.

(2) In addition to the foregoing, the department may request specific investigations by the preceding public agencies where desired information is not otherwise available.

History: En. Sec. 23, Ch. 237, L. 1961; amd. Sec. 179, Ch. 253, L. 1974.

Amendments

The 1974 amendment inserted the subsection designations; substituted "department" for "administrator" throughout the

section; substituted "the board of oil and gas conservation, the department of health and environmental sciences" in subsection (1) for "the Montana oil and gas conservation commission, the state board of health"; and made minor changes in phraseology.

89-2934. Power to administer oaths and subpoena witnesses. The department may administer oaths and issue subpoenas for the attendance of witnesses, in any investigation, hearing or proceeding held by it.

History: En. Sec. 24, Ch. 237, L. 1961; amd. Sec. 180, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "administrator"; and made minor changes in phraseology and punctuation.

89-2934.1. Hearings before board—Administrative Procedure Act. (1) A person who is aggrieved by a final decision of the department under this chapter, is entitled to a hearing before the board.

(2) The Montana Administrative Procedure Act [82-4201 to 82-4225] governs administrative proceedings under this chapter.

History: En. 89-2934.1 by Sec. 45, Ch. 452, L. 1973; amd. Sec. 181, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "administrator" in subsection (1).

Repealing Clause

Section 46 of Ch. 452, Laws 1973 read "Sections 89-121 through 89-123, 89-801 through 89-804, 89-807 through 89-816, 89-829 through 89-842, 89-844 and 89-845,

89-847 through 89-855, 89-857 through 89-864, 89-2912, 89-2913, 89-2919 through 89-2925, 89-2935, R. C. M. 1947, are repealed."

Separability Clause

Section 47 of Ch. 452, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

89-2935. Repealed.

Repeal

Section 89-2935 (Sec. 25, Ch. 237, L.

1961), relating to filing fees, was repealed by Sec. 46, Ch. 452, Laws 1973.

89-2936. Penalties. Any person who violates or refuses or neglects to comply with any provision of this act, or of any order, rule or regulation promulgated by the department or the board, or who commits waste, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars (\$25) nor more than two hundred and fifty dollars (\$250) for each offense.

History: En. Sec. 26, Ch. 237, L. 1961; amd. Sec. 182, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department or the board" for "administrator"; and made minor changes in style.

CHAPTER 33—COUNTY AND MUNICIPAL PARTICIPATION IN FLOOD CONTROL AND WATER CONSERVATION

- Section 89-3301. Participation in projects authorized—work which may be undertaken.
 89-3302. Water conservation and flood control activities declared public purpose.
 89-3303. Acquisition of property—condemnation.
 89-3304. Acceptance of aid—assumption of remaining cost.
 89-3305. Right of way and construction costs.
 89-3306. Direction of project.
 89-3307. Contributions to right of way costs—agreement to maintain works.
 89-3308. Street or road fund used.
 89-3309. Levy of special assessment—apportionment to property benefited.
 89-3309.1. Charges to be levied.
 89-3310. Contracts for use of railroads and highways.
 89-3311. Division of work into parts—separate proceedings for parts.
 89-3312. Indebtedness and bonds—bond election—special assessment to pay indebtedness.
 89-3313. Powers additional.
 89-3314. Provisions to provide alternative method.

89-3301. Participation in projects authorized—work which may be undertaken. Cities, towns or counties, through their councils, boards of county commissioners, or other governing body, are hereby empowered, either individually or jointly, to engage or participate in the establishment of water conservation and flood control projects within the limits of such city, town or county for the protection or reclamation of property situated therein from floods or high waters and to protect property therein from the effects of flood water, and for the conservation, development, storage, distribution, drainage and utilization of water for purposes beneficial to the district, such purposes to include but not be limited to industrial and municipal water supply, recreation and wildlife, irrigation, streamflow stabilization, household and domestic use and pollution abatement, whenever the establishment of such a water conservation and flood control system shall, in the judgment of the city council, board of county commissioners or other governing body, be conducive to public convenience and welfare. Such cities, towns or counties may in accordance with the provisions of this act individually, jointly or severally, or in co-operation with the federal or state government or any department or agency thereof, and with each other, deepen, widen, straighten, alter, change, divert or otherwise improve the watercourses within or without their limits, by constructing levees, dikes, embankments, structures, impounding reservoirs or conduits, and improve, widen and establish streets, alleys and boulevards across and adjacent to the abandoned or new channel or conduit and provide for the payment of the cost and maintenance of such project or projects under the terms of this act. The boundaries of a project once established shall not be extended without the vote of a majority of the electors residing in the area proposed to be annexed. Such electors to be determined and such election to be held in accordance with the provisions of section 89-3312 of this act.

History: En. Sec. 1, Ch. 272, L. 1965;
 amd. Sec. 1, Ch. 284, L. 1967.

Title of Act

An act authorizing cities, towns or counties to participate in flood control or

flood prevention projects, to acquire property for such purpose, to accept federal aid for such purpose, providing for division of expenses in connection with such purpose, providing for assessments, permitting the cities, towns or counties to

enter into certain contracts in pursuance of such purpose, authorizing the issuance of general obligation bonds for such purpose upon an election thereon, authorizing the state water conservation board to co-ordinate such activities when two or more counties are involved and for that purpose appropriating to the state water conservation board the sum of one dollar (\$1) from the general fund of the state of Montana for the biennium commencing July 1, 1965, containing a repealing clause and containing a savings clause.

Amendments

The 1967 amendment substituted "water conservation and flood control projects" for "a flood control or flood prevention project" after "establishment of" in the first sentence, inserted "and for the conservation, development, * * * pollution abatement" before "whenever" and inserted "water conservation and" after "such a"; inserted "or state" after "federal" in the second sentence, substituted "such project or projects" for "such flood control project" before "under the terms" near the end of the second sentence and added the last sentence.

89-3302. Water conservation and flood control activities declared public purpose. Such water conservation and flood control activities, their establishment, construction, operation and maintenance as authorized by this act are declared to be for the protection of the tax base of the city, town or county, for the protection of public roads, lands and improvements, and for the protection of the public health, sanitation, safety and for improvement of the general welfare.

History: En. Sec. 2, Ch. 272, L. 1965; amd. Sec. 2, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "water

conservation and" after "Such" at the beginning of the section and inserted "for improvement of the" before "general welfare" at the end of the section.

89-3303. Acquisition of property—condemnation. Cities, towns and counties may acquire by gift, purchase or condemn and appropriate private property within the limits of the project, including the right to cross railroad right of way and property and highway right of way and property, so as not to impair the previous public use, as may be necessary to carry into effect the provisions of this act, and to provide an outlet for the watercourses, either natural or artificial, which may be deepened, widened, straightened, altered, changed, diverted or otherwise improved under the provisions of this act. All provisions of the laws of the state of Montana relating to the condemnation of lands for public purposes shall apply to the provisions thereof in and so far as applicable.

History: En. Sec. 3, Ch. 272, L. 1965; amd. Sec. 3, Ch. 284, L. 1967.

Amendments

The 1967 amendment deleted "flood control" before "project."

89-3304. Acceptance of aid—assumption of remaining cost. Cities, towns and counties may in accordance with the provisions of this act accept funds and property or other assistance, financial or otherwise, from federal, state and other public or private sources for the purpose of aiding the construction and maintenance of water conservation and flood control projects; and co-operate and contract with the state or federal government, or any department or agency thereof, in furnishing assurances and meeting local co-operation requirements of any project involving control, conservation and use of water.

History: En. Sec. 4, Ch. 272, L. 1965; amd. Sec. 4, Ch. 284, L. 1967.

Amendments

The 1967 amendment substituted "funds and property or other assistance * * * and

use of water" for "federal aid in the doing of the acts provided in sections 1 and 3 hereof, and may assume such portion of the cost thereof not discharged by such federal aid" after "this act accept."

89-3305. Right of way and construction costs. The cost of all right of way acquired by purchase or condemnation may be borne by the city, town or county together with any other property rights which may be required in furtherance of such projects, and the work of actual construction and the cost thereof may be borne by the federal government.

History: En. Sec. 5, Ch. 272, L. 1965.

89-3306. Direction of project. This act contemplates that the actual direction of the project and the doing of the work in connection therewith is assumed by either the state or the federal government and the city, town or county provides and assumes the cost of necessary right of way over and above such contributions in that regard as the federal government may choose to make. Under such limitation all appropriate portions of this act shall apply.

History: En. Sec. 6, Ch. 272, L. 1965; amd. Sec. 5, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "either the state or" after "assumed by."

89-3307. Contributions to right of way costs—agreement to maintain works. Cities, towns and counties in furtherance of such water conservation and flood control projects may accept contributions to enable them to pay for necessary right of way. They may also enter into agreement with the federal government to maintain levees, dikes, or other construction and to do all other acts required by the federal government in maintaining the work when completed.

History: En. Sec. 7, Ch. 272, L. 1965; amd. Sec. 6, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "water conservation and" before "flood control."

89-3308. Street or road fund used. The council, board or governing body shall have power to allocate a portion of the street or road fund, as the case may be, for the purpose of acquiring right of way or the operation and maintenance of completed projects.

History: En. Sec. 8, Ch. 272, L. 1965; amd. Sec. 7, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "operation and" before "maintenance"; and deleted "flood control" before "projects."

89-3309. Levy of special assessment—apportionment to property benefited. Any city, town or county that shall establish a water conservation or flood control system or both pursuant to this act may for the purpose of providing funds for the operation and maintenance thereof levy an annual special assessment against all real property in the area benefiting from such

system. Such special assessment shall be levied against each lot or parcel of land in the benefited area for that portion of the money required which its area bears to the total area of all of the lands to be assessed; or said assessment may, at the option of the governing body of the city, town or county, as the case may be, be based upon the taxable valuation, as stated in the last completed county assessment roll, of the lots or parcels of land exclusive of improvements thereon, within said benefited area, in which case each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed. Provided, however, that where the benefited area lies in more than one county or lies both within a county and also a city or town, the same method of assessment shall be used for each governing body. Such special assessments for the operation and maintenance of any system authorized by this act shall be levied as are other special improvement levies as required by law.

History: En. Sec. 9, Ch. 272, L. 1965; amd. Sec. 8, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "water conservation or" before "flood control"; inserted "or both" before "pursuant"; substituted the present second and third

sentences for former second sentence which read, "Such special assessment shall be apportioned among the several lots or parcels of real property in the benefited area in proportion to the benefit conferred"; and, in the last sentence deleted "flood control" before "system."

89-3309.1. Charges to be levied. Cities, towns and counties may for the purpose of providing funds for the operation and maintenance of completed projects, fix, maintain and collect fees, rents, tolls and other charges for services rendered or facilities provided. In fixing such rate, fee, toll or rent the governing body shall charge for water furnished for household use, domestic use, irrigation use, industrial use, municipal use and for water used for streamflow stabilization a fee sufficient to pay the proportionate share of the repairs, maintenance and operating expenses as such use bears in economic value, such economic value to be determined by the governing body, to the total economic value of the total use of said facilities of the project or projects. For the benefits received by areas within the boundaries of the project or projects for flood prevention, flood control and pollution abatement, the governing body shall determine a reasonable valuation or charge, which valuation or charge shall be certified by them to the county commissioners prior to the time general taxes are levied and assessed and it shall be the obligation of the county commissioners to levy a special assessment as provided for in section 89-3309 against such area or areas sufficient to provide revenues for the repairs, maintenance and operating expenses of the project. For recreation use the governing body shall first determine the share of the costs of operation, repairs and depreciation to be charged against such uses, and from this figure shall subtract the estimated amount of fees and tolls collected for such uses; the deficiency, if any, shall be certified to the county commissioners in the same way as the charges for flood prevention, flood control, etc. and special assessments be levied by the county commissioners in the manner set out herein. The council, board of county commissioners or other governing body shall also have the authority to receive and

accept appropriations and contributions from any source of either money or property or other things of value, to be held, used, and applied for the purposes in this act provided.

History: En. Sec. 9, Ch. 284, L. 1967.

Title of Act

An act amending sections 89-3301, 89-3302, 89-3303, 89-3304, 89-3306, 89-3307, 89-3308, 89-3309, 89-3310, 89-3311, R. C. M. 1947, relating to city and county flood control projects, to authorize multiple use

water projects by cities and counties; to change the method of levying the special assessment to pay for such projects; authorizing cities and counties to charge fees for services and facilities provided by such projects; and providing an effective date.

89-3310. Contracts for use of railroads and highways. A city, town or county may contract with a railroad company or with the department of highways for the use of railroad or highway rights of way and embankments, and other railroad or highway property which can be utilized by the city, town or county for the purpose of water conservation or flood control or protection as part of its water conservation or flood control system, or both, for a period not exceeding ninety-nine (99) years.

History: En. Sec. 10, Ch. 272, L. 1965; amd. Sec. 10, Ch. 284, L. 1967; amd. Sec. 207, Ch. 253, L. 1974.

wherever found in this section; inserted "or both" before "for any period."

The 1974 amendment substituted "department of highways" for "state highway commission"; and made minor changes in phraseology.

Amendments

The 1967 amendment inserted "water conservation or" before "flood control"

89-3311. Division of work into parts—separate proceedings for parts. Whenever any city, town or county has begun a water conservation or flood control system, or both, under this act, the council, board or other governing body shall have the power to divide the work into parts, sections or districts; to omit parts of said work and to contract for any part or section separately and proceed therewith the same as if the entire work or improvements were contracted for, done or made.

History: En. Sec. 11, Ch. 272, L. 1965; amd. Sec. 11, Ch. 284, L. 1967.

conservation or" before "flood control"; and inserted "or both" before "under this act."

Amendments

The 1967 amendment inserted "water

89-3312. Indebtedness and bonds—bond election—special assessment to pay indebtedness. Cities, towns and counties are hereby authorized to contract indebtedness and to issue special improvement district or rural improvement district bonds to provide funds for the payment of the cost of improvements contemplated by this act by following the following procedures:

The governing body of the city, town or county may call a special election to vote upon the proposition of issuing said bonds or may submit the proposition as a special question at a regular municipal or general election. The notice of the election and the election itself shall be carried out in accordance with sections 11-2201 through 11-2288, R. C. M. 1947, as amended, as to cities, and in accordance with sections 16-1601 through 16-1638, R. C. M. 1947, as amended, as to the counties.

Tax assessments for the payment of said bonds shall be levied in accordance with sections 11-2201 through 11-2288 and sections 16-1601 through 16-1638, R. C. M. 1947, as amended, as to cities and counties, respectively.

History: En. Sec. 12, Ch. 272, L. 1965; amd. Sec. 1, Ch. 239, L. 1971.

Amendments

The 1971 amendment substituted "special improvement district or rural improvement district bonds" for "general obligation bonds" in the first paragraph; substituted "sections 11-2201 through 11-2288" for "11-2301 through 11-2330" in the second paragraph; substituted "sections 16-1601 through 16-1638" for "16-2002 through 16-2050" in the second paragraph; substituted "Tax assessments" for "Taxes" at the beginning of the third

paragraph; substituted "sections 11-2201 through 11-2288 and sections 16-1601 through 16-1638" for "11-2301 through 11-2330 and sections 16-2002 through 16-2050" in the third paragraph; deleted the former second sentence of the third paragraph reading, "The indebtedness incurred for the purposes herein provided shall not be considered an indebtedness for general or ordinary purposes and shall not be charged against or counted as part of the levies available for general or ordinary purposes"; and made minor changes in style.

89-3313. Powers additional. This act, and each section thereof, shall be construed as granting additional power without limiting the power already existing in cities, towns and counties.

History: En. Sec. 13, Ch. 272, L. 1965.

Appropriation

Section 14 of Ch. 272, Laws 1965, appropriated \$1.00 to the water conservation board from the general fund for the biennium commencing July 1, 1965.

Separability Clause

Section 15 of Ch. 272, Laws 1965 read "If a part of this act shall be declared to be invalid, all valid parts that are sev-

erable from the invalid parts remain in effect. If a part of this act is declared to be invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 16 of Ch. 272, Laws 1965 repealed all acts and parts of acts in conflict therewith.

89-3314. Provisions to provide alternative method. The provisions of this chapter and the methods of organization of water conservation and flood control projects are hereby declared to be an alternative method to any other method proposed by any law now in existence or hereafter enacted for the creation of such projects and it is hereby declared that no provision hereof shall be amended or repealed by implication or otherwise as being in conflict with any existing law or future enactment unless specifically so declared by the legislature.

History: En. Sec. 12, Ch. 284, L. 1967.

Effective Date

Section 13 of Ch. 284, Laws 1967 pro-

vided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

CHAPTER 34—CONSERVANCY DISTRICTS

Section 89-3401. Organization of conservancy districts and construction of works a public use—benefits.

89-3402. Purpose of act.

89-3403. Definitions.

89-3404. Preliminary survey—petition.

89-3405. Action by water board upon receipt of request.

89-3406. Hearing by department.

89-3407. Feasibility study and report—adjustment of proposed boundaries.

89-3408. Procedure for organization of district.

- 89-3409. Court hearing on organization petition—election—voters needed to organize—no jurisdiction to determine priority of appropriation.
- 89-3410. Filing of documents after organization.
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- 89-3412. Appointment of directors—terms of office—vacancies—first annual meeting—corporate surety bond.
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- 89-3431. Comparable to municipal bonds—exempt from taxation.
- 89-3432. Interim receipts—negotiability.
- 89-3433. Registration of bonds—copy to be furnished county treasurer.
- 89-3434. Deposit of sales proceeds—disposition—investment.
- 89-3435. Refunding bonds authorized—redemption.
- 89-3436. Fund for retirement of bonds—investment and disbursement.
- 89-3437. Revolving funds—purpose—excess money—funds deposited with county treasurer.
- 89-3438. Petition for merger of districts—hearing and notice—merger into new district—inclusion in another district—majority of electors may kill merger by petition—existing obligations.
- 89-3439. Procedure for annexing realty.
- 89-3440. Pre-annexation bonds not lien without prior agreement.
- 89-3441. Exclusion of territory from district—procedure.
- 89-3442. Procedure for dissolution of district.
- 89-3443. Dissolution election—majority approval required.
- 89-3444. Submission of termination plan—termination by directors or receiver—court order—retention of jurisdiction.
- 89-3445. Appointment of receiver—directors' authority ceases—assessments by receiver—annual assessments—disposition of assessments.
- 89-3446. Entry of dissolution order—certified copy.
- 89-3447. County general funds to receive funds remaining after dissolution—proportion.
- 89-3448. No power to generate, distribute or sell electric energy.
- 89-3449. Other agencies not affected.

89-3401. Organization of conservancy districts and construction of works a public use—benefits. To provide for the conservation and development of the water and land resources of the state of Montana, conserve Montana's water for utilization for beneficial purposes within the state, and provide for the greatest beneficial use of water within this state, the organization of conservancy districts and the construction of works as defined by the act are a public use and will:

- (1) be essentially for the public benefit and advantage of the people of Montana;
- (2) benefit all industries of the state;
- (3) encourage economic growth;
- (4) indirectly benefit the state by increasing property valuations;
- (5) directly benefit municipalities by providing adequate supplies of water for domestic uses;
- (6) directly benefit lands irrigated or drained by works constructed;
- (7) directly benefit lands now irrigated by stabilizing the flow of water in streams and by increasing the flow and return flow of water to those streams;
- (8) enhance fish and wildlife habitat;
- (9) improve recreational facilities; and
- (10) promote the comfort, safety, and welfare of the people of Montana.

History: En. Sec. 1, Ch. 100, L. 1969.

and development of water and land resources of Montana through the creation of conservancy districts.

Title of Act

An act providing for the conservation

89-3402. Purpose of act. The purpose of this act is to enable the formation of conservancy districts, comprised of area in one or more counties to promote the following purposes:

- (1) **prevent and control** floods, erosion and sedimentation;
- (2) provide for regulation of stream flows and lake levels;
- (3) improve drainage and to reclaim wet or overflowed lands;
- (4) promote recreation;
- (5) develop and conserve water resources and related lands, forest, fish and wildlife resources;
- (6) further provide for the conservation, development, and utilization of land and water for beneficial uses including, but not limited to, domestic water supply, fish, industrial water supply, irrigation, livestock water supply, municipal water supply, recreation, and wildlife.

History: En. Sec. 2, Ch. 100, L. 1969.

89-3403. Definitions. As used in this act unless the context clearly indicates otherwise:

(1) "District" means a conservancy district, which is a public corporation and a political subdivision of the state.

(2) "Directors" means the board of directors of a conservancy district.

(3) "Elector" means a person qualified to vote under section 89-3423.

(4) "Court" means the district court of the judicial district in which the largest portion of the taxable valuation of real property of the proposed district is located and within the county in which the largest

portion of the taxable valuation of real property of the proposed district is located within the judicial district.

(5) "Person" means a natural person; firm; partnership; co-operative; association; public or private corporation, including the state of Montana or the United States; foundation; state agency or institution; county; municipality; district or other political subdivision of the state; federal agency or bureau; or any other legal entity.

(6) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(7) "Board of supervisors" means the board of supervisors of the soil and water conservation district in which the largest portion of the taxable valuation of real property of the proposed district is located.

(8) "Works" means all property, rights, easements, franchises, and other facilities including, but not limited to, land, reservoirs, dams, canals, dikes, ditches, pumping units, mains, pipelines, waterworks systems, recreational facilities, facilities for fish and wildlife, and facilities to control and correct pollution.

(9) "Cost of works" means the cost of construction, acquisition, improvement, extension and development of works, including financing charges, interest and professional services.

(10) "Applicants" means any persons residing within the boundaries of the proposed district making a request for a study of the feasibility of forming a conservancy district.

(11) "Notice" means publication at least once each week for three (3) consecutive weeks in a newspaper published in each county, or if no newspaper is published in a county, a newspaper of general circulation in the county, or counties, in which a district is or will be located. The last published notice shall appear not less than five (5) days prior to any hearing or election held under this act.

(12) "Owners" are the person or persons who appear as owners of record of the legal title to real property according to the county records whether such title is held beneficially or in a fiduciary capacity, except that a person holding a title for purposes of security is not an owner nor shall he affect the previous title for purposes of this act.

(13) "Taxable valuation" shall mean the valuation determined according to section 84-302, R. C. M., 1947, and does not mean assessed valuation.

History: En. Sec. 3, Ch. 100, L. 1969; amd. Sec. 183, Ch. 253, L. 1974.

Amendments

The 1974 amendment rewrote subdivi-

sion (6) which defined the water board as the "state water resources board"; made a minor change in style; and corrected two errors in spelling.

89-3404. Preliminary survey—petition. (1) To request a preliminary survey for a proposed conservancy district, the applicants shall present a written petition to the department.

(2) The petition shall:

- (a) be signed by at least ten per cent (10%) of the registered voters residing within the boundaries of the proposed conservancy district;
 - (b) generally describe the proposed boundaries of the district;
 - (c) specify the purpose or purposes of the district;
 - (d) list the works contemplated;
 - (e) request that a preliminary survey be initiated.
- (3) The department may initiate a preliminary survey without any prior written petition.

History: En. Sec. 4, Ch. 100, L. 1969; amd. Sec. 1, Ch. 19, L. 1973.

Amendments

The 1973 amendment substituted "petition" for "request" throughout the section; substituted "department" for "water

board" throughout the section; inserted a new subdivision (2)(a); redesignated former subdivisions (a), (b) and (c) of subdivision (2) as (b), (c) and (d); inserted a new subdivision (2)(e); and inserted "written" in subdivision (3).

89-3405. Action by water board upon receipt of request. (1) Sooner than eleven (11) days after the request is received, the department shall acknowledge the request.

(2) The department shall itself, or through co-operating agencies, or together with co-operating agencies:

- (a) consult with the board of supervisors and all persons who may participate in the proposed project;
- (b) conduct a preliminary survey of the proposed district;
- (c) estimate costs of works, maintenance, and operation;
- (d) determine sources of financing;
- (e) reach a tentative decision on the feasibility, desirability and compatability with the state water plan of the proposed district;
- (f) adjust the boundaries of the proposed district to improve the feasibility, desirability or consistency with the state water plan;
- (g) sooner than one (1) year after receipt of the request, send a report of the preliminary survey to the applicants, the board of supervisors, fish and game commission, department of health and environmental sciences, and other affected state and federal resource agencies for their comments.

History: En. Sec. 5, Ch. 100, L. 1969; amd. Sec. 184, Ch. 253, L. 1974.

Amendments

The 1971 amendment increased from six months to one year the time allowed by subdivision (2)(g) for the report of preliminary survey.

The 1974 amendment substituted "department" for "water board" in subsections (1) and (2); deleted "state soil conservation committee" after "fish and game commission" in subdivision (2)(g); and substituted "department of health and environmental sciences" for "state board of health" in subdivision (2)(g).

89-3406. Hearing by department. (1) Upon receipt of the preliminary survey report the applicants, or any one of them, may request the department to hold a hearing. The department shall hold the hearing sooner than sixty-one (61) days after receipt of the request. Notice of the hearing shall be given in accordance with section 89-3403 (11).

(2) If the department itself initiated the preliminary survey, it may hold a hearing without being requested to do so.

History: En. Sec. 6, Ch. 100, L. 1969; amd. Sec. 185, Ch. 253, L. 1974. department" for "water board" throughout the section; and made minor changes in phraseology and style.

Amendments

The 1974 amendment substituted "de-

89-3407. Feasibility study and report—adjustment of proposed boundaries. After the hearing, the applicants, or any one of them, may request the department to prepare a detailed feasibility study of the proposed district. If the department concludes that the proposed district is feasible, desirable, and consistent with the state water plan, it shall prepare a **feasibility report, and sooner than one (1) year** after receipt of the request, send copies to the applicants, if any, the fish and game commission, department of health and environmental sciences, and other affected state and federal water resource agencies. For good cause shown based upon the actual technical problems in completing the report, the department may use necessary additional time to complete and distribute the report. The detailed feasibility report shall describe the proposed works and contain an estimate of the cost of the works, the means of financing, and the estimated costs of operation and maintenance. The department may adjust the boundaries of the proposed district to improve the feasibility, desirability and consistency with the state water plan, and to exclude land which would receive no direct or indirect benefits from the proposed district.

History: En. Sec. 7, Ch. 100, L. 1969; amd. Sec. 1, Ch. 303, L. 1971; amd. Sec. 186, Ch. 253, L. 1974.

The 1974 amendment substituted "department" for "water board" throughout the section; deleted "state soil conservation committee" after "fish and game commission"; and substituted "department of health and environmental sciences" for "state board of health" in the second sentence.

Amendments

The 1971 amendment increased the time allowed for the feasibility report by the second sentence from six months to one year.

89-3408. Procedure for organization of district. If in the opinion of the department the feasibility study shows that a district is feasible and consistent with the state water plan, the procedure for organization is:

(1) the department shall file a petition requesting organization with the court;

(2) the petition shall:

(a) state the name of the proposed district;

(b) give a legal description of the boundaries of the proposed district, excluding therefrom lands which would receive no direct or indirect benefits from the proposed district;

(c) describe the purposes of the district;

(d) describe the works;

(e) indicate the estimated cost of works, means of financing, and estimated costs of operation and maintenance;

- (f) list the taxable valuation of real property in the proposed district, which must be one hundred thousand dollars (\$100,000) or more;
- (g) describe the means of repaying capital costs;
- (h) propose the persons who should be represented and the number of directors.

(3) The petition shall be signed by owners of at least fifty-one per cent (51%) of the land outside the limits of an incorporated municipality, and not fewer than five per cent (5%) or one hundred (100), whichever is the lesser, of the persons who would qualify as electors within an incorporated municipality.

History: En. Sec. 8, Ch. 100, L. 1969;
amd. Sec. 187, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "water board" in the introductory clause and in subsection (1).

89-3409. Court hearing on organization petition — election — voters needed to organize—no jurisdiction to determine priority of appropriation. (1) Upon receipt of a petition for organizing a district, the court shall give notice and hold a hearing on the petition. If the courts shall find that the prayer of the petition should be granted, it shall:

- (a) make and file findings of fact specifying those lands that will be directly or indirectly benefited by the proposed district, and exclude those lands which will not be so benefited;
- (b) make an order fixing the time and place of an organizing election;
- (c) give notice of an election in the way provided in section 3, subsection (11) [89-3403 (11)];
- (d) provide for election judges and fix their compensation;
- (e) fix the polling place or places as necessary;
- (f) order the county clerk to provide pollbooks, ballots, poll lists and other necessary election supplies;
- (g) provide for canvassing the results;
- (h) declare the results;
- (i) order and decree the district organized if the requisite number of eligible electors vote in favor of organization.

(2) In order for the district to be organized, fifty-one per cent (51%) or more of the eligible electors must vote in the election, and a majority of those voting must vote in favor of organization.

(3) This act shall not confer upon the court jurisdiction to hear, adjudicate, and settle questions concerning the priority of appropriation of water between districts and other persons. Jurisdiction to hear and determine priority of appropriation, and questions of right growing out of, or in any way connected with a priority of appropriation,

are expressly excluded from this act and shall be determined as otherwise provided by the laws of Montana.

History: En. Sec. 9, Ch. 100, L. 1969.

89-3410. Filing of documents after organization. Sooner than thirty-one (31) days after the district has been decreed organized, the clerk of the court shall transmit to the secretary of state, the department, and to the county clerk and recorder in each of the counties having lands in the district, copies of the election results, the decree of the court incorporating the district, and a description of the boundaries of the district. Copies of the same documents shall be filed in the office of the secretary of state in the same manner as articles of incorporation are required to be filed under the laws governing corporations. Copies shall also be filed in the office of the county clerk and recorder of each county in which a part of the district may be. The clerk and recorder of each county where the articles are filed and the secretary of state shall collect filing fees as provided by law.

History: En. Sec. 10, Ch. 100, L. 1969;
amd. Sec. 188, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "the department" for "water board" near the beginning of this section.

89-3411. Reimbursement for expenses of organizing election. If organized, the district shall reimburse the county, or counties, for the expenses incurred in the organizing election.

The costs of conducting the preliminary and feasibility studies shall be considered costs of construction of an approved project and shall be included in determination of the repayment schedules by the directors of the district.

History: En. Sec. 11, Ch. 100, L. 1969;
amd. Sec. 1, Ch. 18, L. 1973.

Amendments

The 1973 amendment added the second paragraph.

89-3412. Appointment of directors—terms of office—vacancies—first annual meeting—corporate surety bond. If a district is organized, the court shall:

(1) establish by court order the number of persons who shall comprise the directors, appoint persons who are electors within the district to membership on the board of directors, and fix their compensation. The number shall not be less than three (3) nor more than eleven (11) persons. In fixing the number and making the appointments the court shall consider the interests and purposes to be served by the district. Upon a verified petition filed by a majority of the directors and for good cause shown, the court may enlarge or reduce the membership of the directors, but not to exceed eleven (11) nor to be less than three (3);

(2) fix the terms of office so that approximately one-third ($\frac{1}{3}$) of the directors first appointed shall serve for one (1) year; approximately one-third ($\frac{1}{3}$) shall serve two (2) years; and the remainder shall serve three (3) years. All succeeding terms shall be three (3) years. Unless

excused for good cause, a director who misses three (3) consecutive regular meetings has vacated his position;

(3) fill all vacancies on the board by appointment or reappointment;

(4) specify a date for the first annual meeting of the directors;

(5) specify the amount and form of a corporate surety bond which each member of the directors shall furnish at the expense of the district, conditioned upon his faithful performance of his duties as a director.

History: En. Sec. 12, Ch. 100, L. 1969.

89-3413. Selection of officers—bylaws and rules—minutes—regular and special meetings. (1) The directors shall select from among themselves a chairman, vice-chairman, secretary, and other necessary officers. The directors shall adopt bylaws and rules for the conduct of meetings. All official acts of the directors shall be entered in a book of minutes to be kept by the secretary.

(2) The directors shall establish times for regular meetings and may hold special meetings upon the call of the chairman or any two (2) members, and (except in case of emergency) upon at least three (3) days notice of the time, place, and purpose of the meeting.

History: En. Sec. 13, Ch. 100, L. 1969.

89-3414. Powers of directors. On behalf of the district, the directors may:

(1) adopt an official seal;

(2) sue and be sued;

(3) adopt rules to promote and encourage water recreation, including requirements concerning public access areas and facilities, and rules respecting the use of reservoirs and waters, picnic sites, and other recreational areas operated by the district. Rules adopted shall be filed with the secretary of directors and shall be available to any interested party upon reasonable request;

(4) enter private property for the purposes of making surveys, provided that just compensation for actual damages is made;

(5) provide for reimbursing of its members for actual expenses;

(6) appropriate water and initiate or participate in the adjudication of streams;

(7) acquire, undertake, construct, develop, improve, maintain, and operate works and all incidental facilities;

(8) acquire by purchase, exchange, gift, lease, grant, devise, or otherwise, lands, water, water rights, or rights of way as necessary for the execution of any authorized function of the district. Title to all property (including water rights) shall be in the name of the district;

(9) merge with other special districts as hereinafter provided;

(10) hold and dispose of property as necessary or convenient in the performance of the functions of the district;

(11) call upon the county attorney or attorney general for such legal services as the district may require, or in the discretion of the directors, employ private legal counsel;

(12) withhold the delivery of water upon which there are any defaults or delinquencies of payment, and otherwise dispose of that water while the default or delinquency continues;

(13) borrow money and incur indebtedness and issue bonds to finance works as provided by this act;

(14) refund bonded indebtedness incurred by the district as provided by this act;

(15) after a hearing held in accordance with section 17 [89-3417] of this act, make assessments sufficient to meet the budgetary requirements for the coming year;

(16) contract for service, for water furnished, or for the sale of water with any person;

(17) fix and revise from time to time and collect rates, fees, and other charges for the services, facilities, or water furnished by the district to any person;

(18) allocate or reallocate unused waters of the district;

(19) co-operate with; accept grants, loans, and other assistance from; act as agent for; and enter into agreements with any and all state or federal agencies, and exercise all necessary or convenient powers in connection therewith;

(20) enter into any obligation or contract with an agency of the federal government for the construction, operation, and maintenance of works; or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands under the provisions of the federal reclamation act and rules established under that act; or contract with an agency of the federal government for a water supply under any federal act providing for or permitting such a contract. However, the action must be approved by a majority of the electors voting at an election held as provided in section 24 [89-3424]. If a contract is made with an agency of the federal government, the directors may deposit bonds of the district with the United States at ninety per cent (90%) of their par value, to secure the amount to be paid by the district to the United States under any contract, the interest on the bonds of the district to be applied as specified by the contract. If bonds of the district are deposited with the United States, it is the duty of the directors to make an assessment sufficient to meet all payments accruing under the terms of any contract with the United States;

(21) accept appointment of the district as fiscal agent for the United States or authorization of the district to make collections of moneys for or on behalf of the United States in connection with any federal reclamation

mation projects and the district is authorized to act and to assume the duties and liabilities incident to this action. However, the action must be approved by a majority of the electors voting at an election held as provided in section 24 [89-3424]. The directors may do all things required by federal statutes and rules and require prompt payment of all charges as a prerequisite to water service;

(22) in addition to all voted indebtedness, borrow money as necessary but the amount shall not at any one time exceed five per cent (5%) of the taxable valuation of real property in the district;

(23) mortgage property owned by the district if the terms of the mortgage are not inconsistent with the provisions of a resolution authorizing the sale of bonds;

(24) use any surplus funds to purchase outstanding bonds;

(25) make contracts incidental to the performance of the district's functions, and employ and fix the compensation of employees, agents or consultants as are deemed necessary, including but not limited to, a manager, attorneys, accountants, engineers, construction and financial experts;

(26) co-operate with soil and water conservation districts to obtain agreements to carry out soil conservation measures and proper farm plans from owners of lands situated in the drainage area above each retention reservoir to be installed with federal assistance.

History: En. Sec. 14, Ch. 100, L. 1969.

89-3415. Participation in federal programs. A district organized under this act, by itself or in conjunction with others, as a sponsoring organization may participate in all federal programs including, but not limited to, the Watershed Protection and Flood Prevention Act of 1954 (68 Stat. 666), the federal Water Project Recreation Act of 1965 (79 Stat. 213), the federal Reclamation Act of 1902 (32 Stat. 388), and amendments to those acts.

History: En. Sec. 15, Ch. 100, L. 1969; amd. Sec. 189, Ch. 253, L. 1974.

Compiler's Notes

The Watershed Protection and Flood Prevention Act of 1954, referred to in this section, is compiled in the United States Code as Tit. 16, sec. 1001 et seq. and Tit. 33, sec. 701b note.

The federal Water Project Recreation Act of 1965 is compiled in the United States Code as Tit. 16, sec. 4601-12.

The federal Reclamation Act of 1902 is compiled in the United States Code as Tit. 43, sec. 371 et seq.

Amendments

The 1974 amendment substituted "may participate" for "to participate."

89-3416. Assessments. (1) To the extent that anticipated revenues from rates, fees, and other charges fixed pursuant to section 14, subsection (17) [89-3414 (17)] will not be sufficient to meet the district's anticipated obligations for annual operation, maintenance, and replacement or depreciation of works, or for payment of the interest and principal on bonded indebtedness, the directors may make an assessment of not more than two (2) mills on all taxable real property in the district for the purpose of fully meeting such obligations.

(2) In addition to the assessment authorized by subsection (1), the directors may annually make an assessment of up to three (3) mills on the taxable real property in the district to pay interest and principal on bonded indebtedness.

(3) The assessments are a lien upon each lot or parcel of land within the district to the extent of the assessment on each.

(4) All assessments have the same force and effect as other liens for taxes and their collection shall be enforced in the way provided for enforcement of liens for county taxes. Assessments, if not paid, become delinquent at the same time as county taxes.

(5) Except as provided in section 29 [89-3429], approval of the electors is not required for the making of these assessments.

History: En. Sec. 16, Ch. 100, L. 1969.

89-3417. Notice of public budget hearing. (1) The directors shall, prior to the first Monday in May of each year, give notice as provided in section 3, subsection (11) [89-3403 (11)] of this act of the intention to hold a public budget hearing. The notice shall include the date, time, place, and general agenda.

(2) At the hearing, the directors shall:

- (a) review the present budget;
- (b) present the budget for the next year;
- (c) hear and consider protests from any elector;
- (d) adopt the budget for the next year;
- (e) set the assessment for the next year.

History: En. Sec. 17, Ch. 100, L. 1969.

89-3418. Directors to inform county assessor and treasurer annually concerning budget, special assessments and realty—multi-county districts. (1) Before the second Monday in July of each year, the directors shall provide the county assessor and treasurer with:

- (a) the budget for the current fiscal year;
- (b) a statement of the amount of special assessments to be collected for the districts;
- (c) a listing of all real property within the district.

(2) If the district is located in more than one (1) county, the directors shall provide this information to each of the county assessors and treasurers.

History: En. Sec. 18, Ch. 100, L. 1969.

89-3419. Collection of special assessments—multi-county districts—investment of surplus funds—interest. (1) The treasurer of each county in which the district is located shall collect special assessments at the same time and in the same way as county taxes.

(2) If the district is located in more than one (1) county, all assessments collected shall be deposited with the treasurer of the county in which the assessments were collected.

(3) The directors shall direct the county treasurer to invest any surplus district funds in saving or time deposits in a state or national bank insured by the Federal Deposit Insurance Corporation or in direct obligations of the United States government payable within one hundred eighty (180) days from the time of investment. All interest collected on the deposits or investments shall be credited to the fund from which the money was withdrawn. However, five per cent (5%) of the interest shall be deposited in the general fund of the county.

History: En. Sec. 19, Ch. 100, L. 1969.

89-3420. Condemnation authorized—water rights. The district may exercise the right of eminent domain in the manner provided by the law to take private property for public use, with just compensation, where the taking is necessary for the purposes of the district. Water rights as such shall not be subject to such taking, but may be taken as an incident to the condemnation of land to which such rights are appurtenant, where the taking of the land is the principal purpose of the condemnation.

History: En. Sec. 20, Ch. 100, L. 1969.

89-3421. Annual written report of directors' activities. Before August 1 of each year, the directors shall send a written report of their activities during the previous fiscal year to the court and to the department. Reports shall be in the form, and contain the information, prescribed by the department.

History: En. Sec. 21, Ch. 100, 1969;
amd. Sec. 190, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "water board" at the end of the first and second sentences.

89-3422. State examiner to examine financial records—report—fee. At least once each year the department of intergovernmental relations shall examine the financial records of each district and file a report of the examination with the department of natural resources and conservation and court. The department of intergovernmental relations shall collect a fee for the examination equal to that charged irrigation districts.

History: En. Sec. 22, Ch. 100, L. 1969;
amd. Sec. 191, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of intergovernmental relations" for "state examiner" in two instances and "department of natural resources and conservation" for "water board."

89-3423. Persons entitled to vote. (1) Only persons who are taxpayers upon and owners of real property located within the district and whose names appear upon the last completed assessment roll of some county within the district for state, county and school district taxes are electors and shall be entitled to vote in elections, provided that:

- (a) an elector need not reside within the district in order to vote;
- (b) where a corporation owns taxable real property within the boundaries of the conservancy district, the authorized agent of such corporation shall be entitled to cast a vote on behalf of the corporation;
- (c) where land is under contract of sale to a purchaser and the contract is recorded, only the purchaser shall have the right to vote;
- (d) guardians, executors, administrators, and trustees of real property within the district, shall be entitled to cast the vote for the owner of the land.

(2) When voting, an agent of a corporation or of co-owners, or a guardian, executor, administrator, trustee, or purchaser under contract of sale, may be required to show his authority by the judges of the election.

History: En. Sec. 23, Ch. 100, L. 1969.

89-3424. Election procedures. Election procedures after organization are:

- (1) The directors shall designate the polling places, at least one (1) in each county, and hours when the polls will be open;
- (2) Notice shall be published of the location of polling places and hours when the polls are open as provided in section 3, subsection (11) [89-3403 (11)] of this act;
- (3) The directors shall appoint three (3) judges for each polling place and fix their compensation;
- (4) The judges shall appoint one (1) of their number as clerk of the election;
- (5) The clerks and recorders of the counties in which the election is to be held shall supply poll lists, registers, ballots, and other necessary election supplies;
- (6) The judges shall cause the ballots to be counted and certify the results to the directors;
- (7) The directors shall canvass the returns;
- (8) The directors shall reimburse the counties for actual expenses incurred in the election.

History: En. Sec. 24, Ch. 100, L. 1969.

89-3425. Challenging voters — oath — penalty for false subscription. An elector may challenge any person who claims the right to vote. Before voting, any person challenged must take and sign the following oath or affirmation administered by an election judge:

"I _____(name) solemnly swear (or affirm) that I am an elector of the district and have not voted today."

False subscription to the oath or affirmation is perjury and punishable as such.

History: En. Sec. 25, Ch. 100, L. 1969.

89-3426. Issuance of bonds—maximum term—sale as single issue of multi-purpose bonds. A district may issue bonds payable from revenues, assessments, or both, or the district may use other financing as provided by this act for the cost of works. Bonds issued shall be for a maximum term of not to exceed forty (40) years. Bonds for more than one purpose may be sold as a single issue.

History: En. Sec. 26, Ch. 100, L. 1969; amd. Sec. 43, Ch. 234, L. 1971.

Effective Date

Section 44 of Ch. 234, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

Amendments

The 1971 amendment deleted from the end of the second sentence "and a maximum rate of interest not more than six per cent (6%)."

89-3427. Determination of amount of bonds to be issued. In determining the amount of bonds to be issued, the directors may include:

- (1) all costs of works;
- (2) all costs and estimated costs of issuance of the bonds;
- (3) interest which they estimate will accrue on money borrowed during the construction period and for six (6) months after the period.

History: En. Sec. 27, Ch. 100, L. 1969.

89-3428. Resolution for issuance of bonds—notice—election. When the directors find it necessary to issue bonds, the directors shall:

- (1) pass a resolution which includes:
 - (a) the purpose or purposes for which the bonds will be issued;
 - (b) the maximum amount and term of the bonds;
 - (c) the maximum interest rate the bonds will bear;
 - (d) whether the bonds will be repaid from revenues, assessments, or both.
- (2) give notice as provided in section 3, subsection (11) [89-3403 (11)] of this act which shall include the resolution adopted by the directors, location of polling places, and hours when the polls will be open;
- (3) hold an election as provided by section 24 [89-3424] of this act.

History: En. Sec. 28, Ch. 100, L. 1969.

89-3429. Approval of bond issue at election—authorizes assessments—recording of election results—validity of election—single proposition.

(1) For a bond issue to be approved, forty per cent (40%) of the qualified electors must vote thereon, and sixty per cent (60%) of those voting must approve the issue.

(2) Approval of the bond issue shall authorize the directors to make assessments as provided in section 16 [89-3416] necessary to pay the principal and interest on bonds issued.

(3) The directors shall enter the results of the election in their records.

(4) If otherwise fairly conducted, no irregularities or informalities shall invalidate the election.

(5) Bonds for more than one purpose may be submitted to the electors as a single proposition.

History: En. Sec. 29, Ch. 100, L. 1969.

89-3430. Resolution providing for form, execution and issuance of bonds—bids—private sale—sale price—rejection of bids. If a bond issue is approved, the directors shall by resolution provide for the form and execution of the bonds and for issuance of all or any part of the bonds. After adequate notice that sealed proposals will be received, the directors may award the purchase of all or a part of the issue to the best bidder or bidders, and may sell at private sale any or all bonds not sold on bids.

The said bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The board shall reserve the right to reject any and all bids and to sell the said bonds at private sale.

History: En. Sec. 30, Ch. 100, L. 1969.

89-3431. Comparable to municipal bonds—exempt from taxation. Bonds issued under this act have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.

History: En. Sec. 31, Ch. 100, L. 1969.

89-3432. Interim receipts—negotiability. Pending preparation of the bonds sold under this act, receipts or certificates may be issued to purchasers in the form, and with provisions, as determined by the directors. Bonds and interim receipts or certificates are fully negotiable as provided by the Uniform Commercial Code—Investment Securities.

History: En. Sec. 32, Ch. 100, L. 1969.

Cross-References

Uniform Commercial Code—Investment Securities, sec. 87A-8-101 et seq.

89-3433. Registration of bonds—copy to be furnished county treasurer. (1) When duly executed, all bonds issued under this act shall be registered by the county treasurer of the county in which the largest portion of the taxable valuation of real property of the district is located. They shall be registered in a book provided for that purpose before being delivered to the purchaser.

(2) The registration shall show:

(a) the number and amount of each bond;

(b) the date of issue and date redeemable;

(c) the name of the purchaser;

(d) the amount and due date of all payments required on the bonds.

(3) The directors shall provide the county treasurer with an unsigned and canceled printed copy of each issue of bonds of the district. The copy shall be preserved in his office.

History: En. Sec. 33, Ch. 100, L. 1969.

89-3434. Deposit of sales proceeds — disposition — investment. (1) Proceeds from the sales of bonds shall be deposited with the county in which the largest portion of the taxable valuation of real property of the district is located.

(2) The county treasurer shall place the proceeds of the bond sale to the credit of the district. The proceeds shall be paid by the county treasurer on written order of the directors. Proceeds shall only be spent for the purposes for which the bonds were issued.

(3) The directors shall instruct the county treasurer to deposit any part of the proceeds which is not immediately needed for the purpose for which the bonds were issued in a saving or time deposit in a state or national bank insured by the Federal Deposit Insurance Corporation or to invest in direct obligations of the United States government. The obligations shall be payable within not to exceed one hundred eighty (180) days from the time of deposit or investment.

History: En. Sec. 34, Ch. 100, L. 1969.

89-3435. Refunding bonds authorized—redemption. (1) Refunding bonds may be issued in the same way as any other bonds authorized by this act.

(2) All bonds, original issue or refunding issue, shall be redeemable when one-half ($\frac{1}{2}$) of the term or ten (10) years of the term for which they were issued, whichever may be the less, has expired. Redemption may be made on any interest due date of any bond prior to its maturity after the bond shall be subject to redemption as herein provided. The right of redemption, as herein provided, must be stated on the face of each bond.

History: En. Sec. 35, Ch. 100, L. 1969.

89-3436. Fund for retirement of bonds—investment and disbursement. Revenue, assessment, and other funds on hand, including reserves pledged for the payment and security of outstanding bonds may be deposited in a fund created for the retirement of bonds and may be invested and disbursed as provided by this act, to the extent consistent with the resolution authorizing the outstanding bonds.

History: En. Sec. 36, Ch. 100, L. 1969.

89-3437. Revolving funds—purpose—excess money—funds deposited with county treasurer. (1) The directors by resolution may establish revolving funds to finance, on a reimbursable basis:

(a) construction, purchase, lease and operation of revenue-producing works;

(b) contracts to provide services or facilities.

(2) Money in the revolving fund shall not be spent for any purposes other than those specified in the resolution. However, excess money may be transferred to any sinking and interest fund of the district.

(3) The county treasurer of the county having the largest portion of the taxable valuation of real property of the district shall maintain a separate account for each revolving fund of the district, and all money collected under the resolution shall be deposited with the county treasurer.

History: En. Sec. 37, Ch. 100, L. 1969.

89-3438. Petition for merger of districts—hearing and notice—merger into new district—inclusion in another district—majority of electors may kill merger by petition—existing obligations. (1) In case two (2) or more districts have been organized in a territory which, in the opinion of the directors of each of the districts, should constitute but one (1) district, the directors of the districts may petition the court for an order merging the districts into a single district. The petition shall be filed in the office of the clerk of the district court in and for that county which has the largest portion of taxable valuation of property within the districts sought to be included, as shown by the tax rolls of the respective counties. The petition shall set forth facts showing that the purposes of this act would be served by the merging of the districts, and that the merger would promote the economical execution of the purposes for which the districts were organized. A copy of the petition shall be filed with the department.

(2) Upon the filing of the petition, the court shall by order fix a time and place of hearing; and the clerk shall give notice as specified in section 89-3403 as well as by mail to the directors of the districts which would be merged. The notice shall contain the purpose, time, and the place of the hearing.

(3) Upon the hearing, should the court find that the averments of the petition are true and that the districts, or any of them, could feasibly and profitably be merged, it shall order that the merger take place and the districts shall be merged into one (1) district and proceed as such. The court shall designate the corporate name of the district, and further proceedings shall be taken as provided for in this act. The court shall by order appoint the directors of the district, who shall thereafter have powers and be subject to rules as are provided for directors in districts created in the first instance.

(4) Instead of organizing a new district from the constituent districts, the court may, in its discretion, direct that one (1) or more of the districts described in the petition be included in another of the districts,

which other shall continue under its original corporate name and organization; or the court may direct that the district or districts so absorbed shall be represented on the directors of the original districts, designating what members of the directors of the original district shall be retired from the new board, and what members representing the included district or districts shall take their places.

(5) If the court receives a petition opposing the merger, signed by a majority of the electors of any of the concerned districts, the court shall not grant the order and shall dismiss the petition.

(6) Upon merger or inclusion, existing obligations shall remain exclusively with those who bore them prior to the merger or inclusion, except with the written consent, given prior to the merger or inclusion, of those who did not bear the obligations.

History: En. Sec. 38, Ch. 100, L. 1969; partment" for "water board" at the end of subsection (1); and substituted "section 89-3403" for "section 3, subsection (11) of this act" in subsection (2).

Amendments

The 1974 amendment substituted "de-

89-3439. Procedure for annexing realty. To annex real property to the district, the procedure is:

(1) The directors shall petition the court.

(2) The petition shall:

(a) give a general description of the real property to be annexed sufficient to enable a person to determine if his property is in the proposed annexation;

(b) describe the benefits to accrue to the real property as a result of the annexation.

(3) The court shall:

(a) give notice and hold a hearing on the petition;

(b) upon good cause shown, order or deny the annexation.

History: En. Sec. 39, Ch. 100, L. 1969.

89-3440. Pre-annexation bonds not lien without prior agreement. Real property annexed to a district shall not incur any liens by reason of bonds issued before annexation unless agreed to by the owners of the annexed property, in writing, prior to annexation.

History: En. Sec. 40, Ch. 100, L. 1969.

89-3441. Exclusion of territory from district—procedure. Any territory included within any district formed under the provisions of this act, and not benefited in any manner by such district, or its inclusion therein, may be excluded therefrom.

The procedure for exclusion is:

(1) A petition for exclusion shall be initiated by either the directors or the owner or owners of the land sought to be excluded.

(2) The petition shall give a description of the territory sought to be excluded sufficient to enable a person to determine if his property is

in the proposed exclusion and shall set forth that such territory is not benefited in any manner by the district or its continued inclusion therein, and shall request that such territory be excluded from the district.

(3) When owners of property initiate the petition for exclusion, the petition shall be filed with the secretary of the district and shall be accompanied by a deposit of one hundred dollars (\$100) to meet the costs incident to the process of exclusion. The unexpended balance of the deposit shall be returned to the petitioner.

(4) Upon the filing of such petition with the secretary of the district, the secretary shall duly call a meeting of the directors to consider the petition. The directors shall approve or disapprove of the merits of the petition. The secretary shall then file the petition, together with a copy of the action of the directors, with the court.

(5) The court shall give notice, hold a hearing, and issue an order either granting or denying the petition.

History: En. Sec. 41, Ch. 100, L. 1969.

89-3442. Procedure for dissolution of district. (1) The procedure for dissolution of a district is:

(a) a resolution shall be passed by the directors requesting dissolution; or

(b) a petition signed by twenty per cent (20%) of the electors representing ten per cent (10%) of the taxable valuation of real property in the district shall be presented to the directors; or

(c) if the district or its directors have been inactive for one (1) year or more, any elector may present a petition.

(2) The resolution or petition shall be presented to the court by the directors, or by the petitioners if the directors remain inactive.

(3) Not more than one (1) resolution or petition may be presented to the court in any twenty-four (24) month period, and no such petition may be presented during the first twenty-four (24) months after a district's initial organization.

History: En. Sec. 42, Ch. 100, L. 1969.

89-3443. Dissolution election — majority approval required. (1) After receipt of petition or resolution for dissolution, the court shall order an election in the way provided by section 24 [89-3424] of this act.

(2) For dissolution to be approved, a majority of the electors voting must favor dissolution.

History: En. Sec. 43, Ch. 100, L. 1969.

89-3444. Submission of termination plan—termination by directors or receiver—court order—retention of jurisdiction. (1) In the event the vote is for dissolution, any qualified elector, or the board of directors of the district may, within the time fixed by the court, present a written

plan for terminating the affairs of the district which shall include assignment of any water rights and works owned by the district.

(2) The plan may specify that the affairs of the district shall be terminated by the directors or by a receiver appointed by the court.

(3) On a day fixed by the court, the court shall consider the plan or plans and shall enter an order establishing a plan for the termination of the affairs.

(4) The court shall retain jurisdiction to modify the plan and shall supervise the termination.

History: En. Sec. 44, Ch. 100, L. 1969.

89-3445. Appointment of receiver—directors' authority ceases—assessments by receiver—annual assessments—disposition of assessments.

(1) If no plan is presented on or before the date set by the court, the court shall appoint a receiver to terminate the affairs of the district under the supervision of the court.

(2) Upon the appointment of any receiver all the authority of the directors shall cease. However, until dissolution, the receiver shall have authority to levy assessments for:

(a) the payment of obligations of the district;

(b) the costs of termination.

(3) The directors, or if there is a receiver, then the receiver with the approval of the court, shall make assessments each year in an amount large enough to retire the obligations of the district.

(4) If a receiver has been appointed, he shall direct, under court supervision, the disposition of all assessments collected.

History: En. Sec. 45, Ch. 100, L. 1969.

89-3446. Entry of dissolution order—certified copy. When it appears to the satisfaction of the court that:

(1) all obligations of the district have been discharged;

(2) all the costs of termination have been paid, the court shall enter an order dissolving the district. A certified copy of the order shall be recorded by the clerk of the court in all counties in which the district was situated and filed with the secretary of state.

History: En. Sec. 46, Ch. 100, L. 1969.

89-3447. County general funds to receive funds remaining after dissolution—proportion. All funds remaining after dissolution of a district shall be deposited in the general fund of the counties in which the district is located in proportion to the taxable value of property within the district in each county.

History: En. Sec. 47, Ch. 100, L. 1969.

89-3448. No power to generate, distribute or sell electric energy. Nothing in this act shall be construed to grant to the district the power to generate, distribute or sell electric energy.

History: En. Sec. 48, Ch. 100, L. 1969.

89-3449. Other agencies not affected. The provisions of this act shall not be construed to, in any manner, abrogate or limit the rights, powers, duties and functions of the department, conservation commission, conservation districts, department of health and environmental sciences, or the fish and game commission; but shall be held to be supplementary thereto and in aid thereof.

History: En. Sec. 49, Ch. 100, L. 1969; amd. Sec. 193, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department * * * environmental sciences" for "water board, state soil conservation committee, soil and water conservation districts, state board of health."

Separability Clause

Section 50 of Ch. 100, Laws 1969 read "It is the intent of the legislative assembly

that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 51 of Ch. 100, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 24, 1969.

CHAPTER 35—FLOODWAY MANAGEMENT AND REGULATION

Section 89-3501. Findings.

89-3502. Policy and purposes.

89-3503. Definitions.

89-3504. Program for delineation of floodplains and floodways—land-use regulations.

89-3505. Artificial obstructions and nonconforming uses as nuisances.

89-3506. Establishment of artificial obstructions or nonconforming uses unlawful—permitted open space uses—prohibited nonconforming uses.

89-3507. Permits for obstructions—application—factors considered—fees.

89-3508. Powers and duties of department relative to obstructions.

89-3509. Authority to enter and investigate lands or waters.

89-3510. Obstructions exempt where drainage area is small.

89-3511. Orders and rules—judicial remedy.

89-3512. Floodway obstruction removal fund.

89-3513. Penalties for violation.

89-3514. Permit construed as added requirement—exception—immunity.

89-3515. Remedies not exclusive.

89-3501. Findings. The people of the state of Montana find that recurrent flooding of a portion of the state's land resources causes loss of life, damage to property, disruption of commerce and governmental services, and unsanitary conditions; all of which are detrimental to the health, safety, welfare and property of the occupants of flooded lands and the people of this state, and that the public interest necessitates management and regulation of flood-prone lands and waters in a manner consistent with sound land and water use management practices which will prevent and alleviate flooding threats to life and health and reduce private and public economic losses.

History: En. Sec. 1, Ch. 393, L. 1971.

Title of Act

An act relating to management and regulation of the floodways of watercourses as prescribed; to define terms; to

provide for certain duties and powers of the Montana water resources board as prescribed; to provide for a floodway obstruction removal fund; to declare certain acts unlawful; and to provide for penalties.

89-3502. Policy and purposes. (1) The policy and purposes of this act are to guide development of the floodway areas of this state consistent

with the enumerated findings; to recognize the right and need of water-courses to periodically carry more than the normal flow of water; to provide state co-ordination and technical assistance to local units in management of floodway areas; to co-ordinate federal, state and local management activities for floodway areas; to encourage local governmental units to manage flood-prone lands including the adoption, enforcement and administration of land-use regulations; and to provide the department of natural resources and conservation with authority necessary to carry out a comprehensive floodway management program for the state.

(2) Specifically, it is the purpose of this act to:

(a) restrict or prohibit uses which are dangerous to health, safety of property in times of flood or cause increased flood heights or velocities;

(b) require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction;

(c) develop and provide information to identify lands which are unsuited for certain development purposes because of flood hazard;

(d) distinguish between the land-use regulations applied to the designated floodway and those applied to that portion of the designated floodplain not contained within the designated floodway;

(e) apply more restrictive land-use regulations within the designated floodway;

(f) ensure that regulations and minimum standards adopted under this act, in so far as possible, balance the greatest public good with the least private injury.

History: En. Sec. 2, Ch. 393, L. 1971; amd. Sec. 1, Ch. 271, L. 1974; amd. Sec. 194, Ch. 253, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 253 and once by Ch. 271. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 253, Laws of 1974, inserted the numerical subsection designations; changed the subdivision designations in subsection (2) from numerals to small letters; substituted "department of natural resources and conservation" for "Montana water resources board" near the end of subsection (1); and made minor changes in punctuation.

Chapter 271, Laws of 1974, added subdivisions (d), (e), and (f) to subsection (2).

89-3503. Definitions. As used in this chapter, unless the context otherwise requires:

(1) "A flood of one hundred year (100) frequency" means a flood magnitude expected to recur on the average of once every one hundred (100) years, or a flood magnitude which has a one per cent (1%) chance of occurring in any given year;

(2) "Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway;

(3) "Board" means the board of natural resources and conservation provided for in section 82A-1509;

(4) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15;

(5) "Designated floodway" means a floodway whose limits have been designated and established by order of the board;

(6) "Designated floodplain" means a floodplain whose limits have been designated and established by order of the board;

(7) "Drainway" means any depression two (2) feet or more below the surrounding land serving to give direction to a current of water less than nine (9) months of the year, having a bed and well-defined banks; provided, that in the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse;

(8) "Flood" means the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway;

(9) "Floodway" means the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the flood water of any watercourse or drainway;

(10) "Floodplain" means the area adjoining the watercourse or drainway which would be covered by the flood water of a flood of one hundred (100) year frequency;

(11) "Establish" means construct, place, insert, or excavate;

(12) "Natural obstruction" means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodplain or floodway by a nonhuman cause;

(13) "Artificial obstruction" means any obstruction which is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodplain or floodway which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property;

(14) "Owner" means any person who has dominion over, control of, or title to an obstruction;

(15) "Political subdivision" means incorporated city or town or any county organized and having authority to adopt and enforce land-use regulations;

(16) "Responsible political subdivision" means a political subdivision that has enacted land-use regulations in accordance with this act; and

(17) "Watercourse" means any depression two (2) feet or more below the surrounding land serving to give direction to a current of water at least nine (9) months of the year, having a bed and well-defined banks; provided, that it shall, upon order of the board, also include any particular

depression which would not otherwise be within the definition of watercourse.

History: En. Sec. 3, Ch. 393, L. 1971; amd. Sec. 1, Ch. 294, L. 1973; amd. Sec. 195, Ch. 253, L. 1974; amd. Sec. 2, Ch. 271, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 253 and once by Ch. 271. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment substituted subdivision (1) for a parallel definition of a "flood of fifty-year frequency"; and inserted the definition of "department" in subdivision (4).

Chapter 253, Laws of 1974, substituted "this chapter" for "this act" in the introductory clause; substituted "board of natural resources and conservation provided for in section 82A-1509" in sub-

division (3); and made minor changes in phraseology and punctuation.

Chapter 271, Laws of 1974, deleted a definition of "artificial obstruction" as meaning any obstruction which is not a natural obstruction; substituted "board of natural resources and conservation" for "Montana water resources board" in subdivision (3); inserted subdivision (6); deleted a definition of "Floodway-encroachment lines" as meaning the lines limiting a designated floodway; added "of a flood of one hundred (100) year frequency" at the end of the definition of "Floodplain" in subdivision (10); inserted "Floodplain or" before "Floodway" in subdivision (12); substituted "Artificial obstruction" for "Obstruction" in subdivision (13); inserted "obstruction which is not a natural obstruction which includes any" before "dam" in subdivision (13); inserted "floodplain or" before "floodway" in subdivision (13); inserted subdivision (16); and made minor changes in phraseology and punctuation.

89-3504. Program for delineation of floodplains and floodways—land-use regulations. (1)(a) The department shall initiate a comprehensive program for the delineation of designated floodplains and designated floodways for every watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data, and may enter into arrangements with the United States geological survey, the United States army corps of engineers or any other state or federal agency for such acquisition.

(b) Before the board establishes by order a designated floodplain or a designated floodway, the department shall consult with the affected political subdivisions. Consultation shall include, but not be limited to, the following:

(i) specifically requesting that the political subdivisions submit pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and such other data as considered appropriate;

(ii) notifying local officials, including members of the county commission, city council and planning board, of the progress of surveys, studies and investigations and of proposed findings, along with information concerning data and methods employed in reaching such conclusions; and

(iii) encouraging local dissemination of information concerning surveys, studies and investigations, so that interested persons will have an opportunity to bring relevant data to the attention of the department.

(2) When sufficient data have been acquired by the department, the board shall establish, by order, after a public hearing, the designated floodplain within which a political subdivision may establish land-use regulation.

When sufficient data have been acquired, the board shall establish, by order, after a public hearing, the designated floodway within which a political subdivision may establish land-use regulation. These designations shall be based upon reasonable hydrological certainty. When the designated floodplain or the designated floodway has been established, the department shall furnish this data to officials of the political subdivision having jurisdiction over those areas together with a map outlining the areas involved, a copy of this act, adopted rules of the board, and suggested minimum standards adopted by the board. These standards and rules shall reflect gradations in flood hazard based on criteria as outlined in section 89-3507(2). In adopting these standards, rules, and regulations, the board shall consider local input from the affected political subdivisions. The department shall record all designated floodplains or designated floodways established by the board in the office of the county clerk and recorder of each county in which those floodplains or floodways are found. The board may alter the floodplains or floodways at any later time, by order, after a public hearing if a re-evaluation of the then available flood data warrants it. Notice of a hearing or order of the board establishing or altering the floodplains or floodways shall be given by publishing the notice once each week for three (3) consecutive weeks in a legal newspaper published or of general circulation in the area involved, the last publication of which shall be not less than ten (10) days prior to the date set for the hearing or the effective date of the order.

(3) Upon transmittal of the floodplain information to officials of a political subdivision, the political subdivision has six (6) months from the date of transmittal to adopt land-use regulations which meet or exceed the minimum standards of the board. If within the six (6) month period the political subdivision has failed to adopt the land-use regulations, the department shall enforce the minimum standards within the designated floodplain or the designated floodway as established by the board under subsection (2) of this section, and no artificial obstruction or nonconforming use shall be established by any person within the designated floodplain or the designated floodway, unless specifically authorized by the board. When necessary for compliance with federal flood insurance requirements, the board may shorten the six (6) month period upon notification to the political subdivision and publication of a notice thereof in a newspaper of general circulation in the affected area once a week for three (3) consecutive weeks.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 253 and once by Ch. 271. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment substituted "one hundred (100) year frequency" for "fifty-year frequency" throughout the section.

Chapter 253, Laws of 1974, substituted "The department" for "The board" at the beginning of subdivision (1)(a); inserted "by the department" after "have been acquired" in the first sentence of subsection (2); substituted "department" for "board" in the provisions requiring the furnishing of data to political subdivisions and recording of designated floodplains or designated floodways in subsection (2);

and made minor changes in phraseology and punctuation.

Chapter 271, Laws of 1974, revised the section to substituted provisions for delineation and establishment of "designated floodplains and designated floodways" for "prior provisions for delineation" of "designated floodways" and establishment of

"floodway-encroachment lines"; changed the period within which political subdivisions are required to adopt line-use regulations from one year to six months; added the last sentence of subsection (3); and made minor changes in phraseology, punctuation, and style.

89-3505. Artificial obstructions and nonconforming uses as nuisances.

An artificial obstruction or nonconforming use in a designated floodplain or designated floodway enforced under section 89-3504(3) and not exempt under section 89-3506 is a public nuisance unless a permit has been obtained for such artificial obstruction or nonconforming use from the department or the responsible political subdivision.

History: En. Sec. 5, Ch. 393, L. 1971; amd. Sec. 3, Ch. 294, L. 1973; amd. Sec. 197, Ch. 253, L. 1974; amd. Sec. 4, Ch. 271, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 253 and once by Ch. 271. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment inserted the reference to subsection (4) of section 89-3504; and made a minor change in style. However, section 89-3504 has no subsection (4).

Chapter 253, Laws of 1974, substituted "section 89-3504(3)" for "89-3504, subsections (3) or (4)"; substituted "section 89-3506" for "section 6 of this act"; and made minor changes in phraseology.

Chapter 271, Laws of 1974, inserted "designated floodplain or" before "designated floodway" and substituted "department or the responsible political subdivision" for "board" at the end of the section.

89-3506. Establishment of artificial obstructions or nonconforming uses unlawful—permitted open space uses—prohibited nonconforming uses.

(1) It is unlawful for a person to establish an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway, without a permit from the department or the responsible political subdivision. This act does not affect any existing artificial obstruction or nonconforming use established in the designated floodplain or designated floodway before the land-use regulations adopted by the political subdivision are effective or before the board has enforced a designated floodplain or a designated floodway under section 89-3504(3); however, a person may not make nor may an owner allow alterations of an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway whether the obstruction proposed for alteration was located in the floodplain or floodway before or after the effective date of this act except upon express written approval of the department or the responsible political subdivision. Maintenance of an obstruction is not an alteration.

(2) The following open space uses shall be permitted within the designated floodway, to the extent that they are not prohibited by any other ordinance or statute, and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment: (a) agricultural uses; (b) industrial-commercial uses such as loading areas, parking areas, emergency landing strips; (c) private and public recreational uses such as golf courses, tennis courts, driving ranges,

archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails; (d) forestry, including processing of forest products with portable equipment; (e) residential uses such as lawns, gardens, parking areas and play areas; (f) excavations subject to the issuance of a permit under section 89-3507.

(3) Permits shall be granted for the following uses within that portion of the floodplain not contained within the designated floodway, to the extent that they are not prohibited by any other ordinance, regulation or statute:

(a) any use permitted in the designated floodway;

(b) structures, including, but not limited to, residential, commercial, and industrial structures, provided that:

(i) such structures meet the minimum standards adopted by the board;

(ii) residential structures are constructed on fill such that the lowest floor elevation (including basements) is two (2) feet above the one hundred (100) year flood elevation;

(iii) commercial and industrial structures are either constructed on fill as specified in subparagraph (ii) above, or are adequately floodproofed up to an elevation no lower than two (2) feet above the one hundred (100) year flood elevation. Such floodproofing shall be in accordance with the minimum standards adopted by the board.

(4) The following nonconforming uses shall be prohibited within the designated floodway: (a) A building for living purposes or place of assembly or permanent use by human beings; (b) a structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway; (c) the construction or permanent storage of an object subject to flotation or movement during flood level periods.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 253 and once by Ch. 271. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment inserted the reference to subsection (4) of section 89-3504 in the second sentence of subsection (1); and made a minor change in style. However, section 89-3504 has no subsection (4).

Chapter 253, Laws of 1974, substituted "before the land-use regulations adopted by the political subdivisions are effective or" for "prior to the effective date of this act and" in the second sentence of subsection (1); substituted "section 89-3504 (3)" for "section 89-3504, subsections (3) or (4)" in the second sentence of subsection (1); and made minor changes in phraseology and punctuation.

Chapter 271, Laws of 1974, inserted references to "designated floodplain"; substituted "the department or responsible political subdivision" for "the board" at the end of the first sentence and at the end of the second sentence in subsection (1); inserted subsection (3); redesignated former subsection (3) as (4); and made minor changes in phraseology and punctuation.

89-3507. Permits for obstructions—application—factors considered—fees. (1) The department or the responsible political subdivision may issue permits for the establishment or alteration of artificial obstructions and nonconforming uses which would otherwise violate section 89-3506. The application for the permit shall be submitted to the department and contain such information as the department or the responsible political subdivision requires, including complete maps, plans, profiles and specifications of the obstruction or use and watercourse or drainway.

(2) In passing upon the application, the department or the responsible political subdivision shall consider in accordance with the minimum standards established by the board: (a) the danger to life and property by water which may be backed up or diverted by the obstruction or use; (b) the danger that the obstruction or use will be swept downstream to the injury of others; (c) the availability of alternate locations; (d) the construction or alteration of the obstruction or use in such a manner as to lessen the danger; (e) the permanence of the obstruction or use; (f) the anticipated development in the foreseeable future of the area which may be affected by the obstruction or use; and, (g) such other factors as are in harmony with the purpose of this act. The department or the responsible political subdivision may make a part of the permit any reasonable conditions it may consider advisable. In order for the permit to continue to remain in force, the obstruction or use must be maintained so as to comply with the conditions and specifications of the permit.

(3) Permits for obstructions or uses to be established in the designated floodplain or designated floodway of watercourses must be specifically approved or denied within a reasonable time by the department or the responsible political subdivision; permits for obstructions or uses in the designated floodplains or designated floodways shall be conclusively deemed to have been granted sixty (60) days after the receipt of the application by the department or the responsible political subdivision, or after such time as the board or the responsible political subdivision specifies, unless the department or the responsible political subdivision notifies the applicant that the permit is denied. The responsible political subdivision shall send to the department a copy of each permit pursuant to this section.

(4) An application for a permit shall be accompanied by a nonrefundable application fee of ten dollars (\$10) which the state treasurer shall credit to the floodway obstruction removal fund.

History: En. Sec. 7, Ch. 393, L. 1971; amd. Sec. 199, Ch. 253, L. 1974; amd. Sec. 6, Ch. 271, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 253 and once by Ch. 271. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 253, Laws of 1974, inserted "be submitted to the department and" in the second sentence of subsection (1); substituted "as the department requires" for "as the board shall require" in the second sentence of subsection (1); substituted "after the receipt of the application by the department" for "after the receipt of such application by the board" in subsection (3); and made minor changes in phraseology and punctuation.

Chapter 271, Laws of 1974, substituted references to "the department or the responsible political subdivision" for references to "the board" in subsections (1), (2), and (3); substituted references to "artificial obstructions and nonconforming uses" and to "obstruction or use" for references to "obstructions" and to "ob-

struction" in subsections (1), (2), and (3); inserted "in accordance with minimum standards established by the board" near the beginning of the first sentence in subsection (2); inserted references to "designated floodplains" in subsection (3); and made minor changes in phraseology and punctuation.

89-3508. Powers and duties of department relative to obstructions.

(1) Where an obstruction to a designated floodway established under section 89-3504(2) has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the department may, in its discretion, remove the obstruction, in which case the cost of removal shall be borne by the department; and

(2) Where, after investigation, notice, and hearing, an order has been issued by the board to the owner of an obstruction not exempt under section 89-3506 for its removal or repair, and the order is not complied with within such reasonable time as may be prescribed, or if the owner cannot be found or determined, the department may make or cause the removal or repairs to be made, the cost of which shall be borne by the owner and shall be recoverable in the same manner as debts are now recoverable by law.

History: En. Sec. 8, Ch. 393, L. 1971; amd. Sec. 5, Ch. 294, L. 1973; amd. Sec. 200, Ch. 253, L. 1974; amd. Sec. 7, Ch. 271, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 253 and once by Ch. 271. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment inserted the reference to subsection (4) of section 89-3504 near the beginning of subdivision (1); and made a minor change in style. How-

ever, section 89-3504 has no subsection (4).

Chapter 253, Laws of 1974, deleted an introductory phrase which read: "The powers and duties of the board relative to obstructions in a board floodway shall include the following"; substituted references to "department" for references to "board" in two places in subsection (1) and in one place in subsection (2); substituted "section 89-3504(2)" for "section 89-3504, subsections (2) or (4)" in subsection (1); inserted "by the board" after "issued" near the beginning of subsection (2); and made minor changes in phraseology and punctuation.

Chapter 271, Laws of 1974, inserted "designated" before "floodway" in subsection (1).

89-3509. Authority to enter and investigate lands or waters. The department or the responsible political subdivision may make reasonable entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair contemplated by this act. An investigation of a natural or artificial obstruction or nonconforming use shall be made by the department either on its own initiative, on the written request of any three (3) titleholders of land abutting the watercourse or drainway involved, or on the written request of a political subdivision.

History: En. Sec. 9, Ch. 393, L. 1971; amd. Sec. 201, Ch. 253, L. 1974; amd. Sec. 8, Ch. 271, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 253 and once by Ch. 271. Neither amendatory act mentioned or in-

corporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 253, Laws of 1974, substituted references to "department" for references

to "board" in two places and made minor changes in phraseology.

Chapter 271, Laws of 1974, inserted "or the responsible political subdivision" after "department" near the beginning of the section; inserted "or nonconforming use" after "obstruction" in the second sentence; and made minor changes in phraseology.

89-3510. Obstructions exempt where drainage area is small. This act shall not extend to any obstruction in the floodplain or floodway of a watercourse or drainway where the drainage area above the same, either within or without the state, is less than twenty-five (25) square miles in extent, unless a particular watercourse or drainway is expressly declared to be within the coverage of this act by order of the board.

History: En. Sec. 10, Ch. 393, L. 1971; amd. Sec. 9, Ch. 271, L. 1974.

Amendments

The 1974 amendment inserted "floodplain" before "floodway."

89-3511. Orders and rules—judicial remedy. The board may adopt such orders and rules as are necessary to implement this act. If an order is issued to the owner of an artificial obstruction or nonconforming use not exempt under section 89-3506 for its removal or repair, the order shall not become effective less than ten (10) days after a hearing is held relating to the order. In addition to any requirement imposed by section 89-3504 (2), where an order is issued which affects with particularity the land adjacent to a watercourse or drainway, notice of the contents of the order and of any required hearing shall be mailed by the department to the titleholder of the land not less than ten (10) days before the effective date of the order, or, if there is a required hearing, to the titleholder of the land and to the owner of the artificial obstruction or nonconforming use not less than ten (10) days before the date of the hearing; however, the notice need not be given to the owner of the artificial obstruction or nonconforming use for an order issued pursuant to section 89-3508 (2) if the owner cannot be found or determined. All orders and rules adopted by the board shall be on file at the offices of the department and in the office of the county clerk of each county affected by the order or rule. A person aggrieved by any order of the board issued under this act may appeal from the order to a court of competent jurisdiction within thirty (30) days after its effective date. If an appeal is taken, enforcement of the order shall be stayed pending the outcome of the appeal. Service of notice of the appeal shall be made upon the department.

History: En. Sec. 11, Ch. 393, L. 1971; amd. Sec. 202, Ch. 253, L. 1974; amd. Sec. 10, Ch. 271, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 253 and once by Ch. 271. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a com-

posite section embodying the changes made by both amendments.

Amendments

Chapter 253, Laws of 1974, substituted references to "department" for references to "board" in the third and fourth sentences; substituted "department" for "director of the board" at the end of the section; and made minor changes in phraseology and punctuation.

Chapter 271, Laws of 1974, inserted "or nonconforming use" after "obstruction" in three places; inserted "artificial" before "obstruction" in two places; and made minor changes in phraseology.

89-3512. Floodway obstruction removal fund. The state treasurer shall establish the floodway obstruction removal fund and credit to the fund for the removal of obstructions as provided in section 89-3508 (1), such money specifically appropriated by the legislature. The department may allocate money from the floodway obstruction removal fund for purposes provided in section 89-3508 (1).

History: En. Sec. 12, Ch. 393, L. 1971; amd. Sec. 203, Ch. 253, L. 1974.

Amendments

The 1974 amendment deleted "or re-appropriated during any biennium" after

"specifically appropriated" in the first sentence; substituted "department" for "Montana water resources board" in the second sentence; and made minor changes in phraseology and style.

89-3513. Penalties for violation. (1) Any person who violates section 6 [89-3506] of this act shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one hundred dollars (\$100), or be imprisoned in the county jail for not more than ten (10) days, or be both so fined and imprisoned. Each day's continuance of a violation shall be deemed a separate and distinct offense.

History: En. Sec. 13, Ch. 393, L. 1971.

89-3514. Permit construed as added requirement—exception—immunity. (1) The granting of a permit under this act does not affect any other type of approval required by any other statute or ordinance of the state, of any political subdivision or of the United States, but is an added requirement; however, if a political subdivision enacts in harmony with the purposes of this act permit issuance ordinances, regulations or resolutions and land-use ordinances, regulations or resolutions which meet or exceed the minimum standards of the board, and if the administrative and enforcement procedures established for those ordinances, regulations, or resolutions are found acceptable by the board, no permit from the department is required; however, if the board determines that there is a failure by a political subdivision to comply with the intent, purposes and provisions of this act and the minimum standards adopted thereunder, the powers of the political subdivision may be suspended after hearing, and the minimum standards adopted by the board shall be enforced by the department until such time as the board determines that the political subdivision will comply. The grant or denial of a permit does not have an effect on a remedy of a person at law or in equity; however, where it is shown that there is a wrongful failure to comply with this act, there is a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of a person bringing suit.

(2) An action for damages sustained because of injury caused by an obstruction for which a permit has been granted under this act may not be brought against the state, the board, a member of the board, or the department. This act does not interfere with the right of the United States

to regulate interstate commerce or the navigable waters of the United States.

History: En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 253 and once by Ch. 271. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 253, Laws of 1974, substituted "or the department" for "or its employees or agents" at the end of the first sentence in subsection (2) and made minor changes in phraseology and punctuation.

Chapter 271, Laws of 1974, rewrote the portion of the first sentence in subsection (1) after the word "however"

which read: "that if a political subdivision enacts and enforces land-use regulations which meet or exceed the minimum standards of the board, the board's recommendations in regard to artificial obstructions or nonconforming uses shall be advisory only"; deleted former subsection (2) which read: "No permit for the construction of any structure to be established within a designated floodway shall be granted by any political subdivision unless the applicant has first obtained the permit required by this act, or until the board acknowledges that such structure would not be an obstruction within the meaning of this act"; and made minor changes in phraseology.

Effective Date

Section 12 of Ch. 271, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

89-3515. Remedies not exclusive. The use of any one of the remedies or powers given to the board or the department in this act is not a bar to the exercise of any other remedy or power given by this act.

History: En. Sec. 15, Ch. 393, L. 1971; amd. Sec. 205, Ch. 253, L. 1974.

Amendments

The 1974 amendment inserted "or the department" after "board" and made a minor change in phraseology.

Separability Clause

Section 16 of Ch. 393, Laws 1971 read "If any section in this act or any part of any section is declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof."

TITLE 90—WEIGHTS—MEASURES AND GRADES—TIME— MONEY

- Chapter 1. Standard weights and measures—state sealer, 90-153 to 90-194.
3. Bread—standard weight and loaf, Repealed—Section 3, Chapter 252, Laws of 1957; Section 24, Chapter 16, Laws of 1965; Section 27, Chapter 307, Laws of 1967.
 6. Packaged commodities offered for sale, 90-621.
 7. Paints—labeling—laboratory analysis, 90-701 to 90-706.

CHAPTER 1—STANDARD WEIGHTS AND MEASURES—STATE SEALER

Section 90-153. Meaning of terms.

- 90-154. Systems of weights and measures.
- 90-155. Definitions of special units of measure.
- 90-156. State standards of weight and measure.
- 90-157. Field standards and equipment.
- 90-158. State sealer, chief sealer, and deputy sealers of weights and measures.
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- 90-165. Sealer—stop-use, stop-removal, and removal orders.
- 90-166. Sealer—disposition of correct and incorrect apparatus.
- 90-167. Sealer—police powers—right of entry and stoppage.
- 90-168. Powers and duties of chief sealer and deputy sealers.
- 90-169. Duty of owners of incorrect apparatus.
- 90-170. Method of sale of commodities—general.
- 90-171. Method of sale of commodities—packages—declarations of quantity and origin—variations—exemptions.
- 90-172. Method of sale of commodities—declarations of unit price on random packages.
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- 90-180. Fluid dairy products.
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- 90-184. Berries and small fruits.
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- 90-186. Hindering or obstructing officer—penalties.
- 90-187. Impersonation of officer—penalties.
- 90-188. Offenses and penalties.
- 90-189. Injunction.
- 90-190. Presumptive evidence.
- 90-191. Validity of prosecutions.
- 90-192. Separability provision.
- 90-193. Repeal of conflicting laws.
- 90-194. Citation.

90-101 to 90-152. (4212 to 4229, 4230.1, 4232, 4234 to 4238, 4240 to 4264) **Repealed.**

Repeal

Sections 90-101 to 90-152 (Secs. 3120 to 3134, 3136, Pol. C. 1895; Sec. 1, p. 137, L. 1901; Sec. 1, Ch. 91, L. 1907; Secs. 1 to 4, 6 to 11, 13 to 16, 18 to 25, 28 to 31, Ch. 34, L. 1911; Secs. 1 to 4, 6 to 13,

15 to 21, Ch. 83, L. 1913; Secs. 1, 2, Ch. 19, L. 1917; Sec. 1, Ch. 74, L. 1921; Secs. 1, 3, Ch. 140, L. 1921; Sec. 2, Ch. 84, L. 1935; Secs. 1, 4 to 31, Ch. 146, L. 1939; Sec. 1, Ch. 27, L. 1941; Secs. 1 to 5, Ch. 110, L. 1945; Sec. 1, Ch. 174, L. 1949; Sec. 1, Ch. 130, L. 1951; Secs. 1 to 6, Ch. 143, L. 1951; Sec. 2, Ch. 158, L. 1953; Sec. 1, Ch. 131, L. 1955; Sec. 1, Ch. 84,

L. 1957; Sec. 1, Ch. 90, L. 1957; Sec. 1, Ch. 157, L. 1957; Sec. 1, Ch. 59, L. 1959; Sec. 1, Ch. 78, L. 1959; Sec. 1, Ch. 147, L. 1961; Sec. 44, Ch. 177, L. 1965), relating to standard weights and measures and the state sealer of weights and measures, were repealed by Sec. 24, Ch. 160, Laws 1965 and Sec. 43, Ch. 99, Laws 1969. For present law, see secs. 90-153 to 90-194.

90-153. Meaning of terms. When used in this act:

(1) The word "person" shall be construed to mean both the plural and singular, as the case demands, and shall include individuals, partnerships, corporations, companies, societies and associations.

(2) The words "weight(s) and (or) measure(s)" shall be construed to mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with any or all such instruments and devices, except that the term shall not be construed to include meters for the measurement of electricity, gas (natural or manufactured), or water when the same are operated in a public utility system. Such electricity, gas, and water meters are hereby specifically excluded from the purview of this act, and none of the provisions of this act shall be construed to apply to such meters or to any appliances or accessories associated therewith.

(3) The words "sell" and "sale" shall be construed to mean barter and exchange.

(4) The term "sealer" shall be construed to mean the state sealer of weights and measures.

(5) The terms "chief sealer" and "deputy sealer" shall be construed to mean, respectively, the state chief sealer of weights and measures and the deputy sealer of weights and measures.

(6) The term "intrastate commerce" shall be construed to mean any and all commerce or trade that is begun, carried on, and completed wholly within the limits of the state of Montana, and the phrase "introduced into intrastate commerce" shall be construed to define the time and place at which the first sale and delivery of a commodity is made within the state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(7) The term "commodity in package form" shall be construed to mean commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of any auxiliary shipping container enclosing packages that individually conform to the requirements of this act. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be construed to be commodity in package form.

(8) A "consumer package" or "package of consumer commodity" shall be construed to mean a commodity in package form that is cus-

tomarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

(9) A "nonconsumer package" or "package of nonconsumer commodity" shall be construed to mean any commodity in package form other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

History: En. Sec. 1, Ch. 99, L. 1969.

Title of Act

An act relating to weights and measures, providing for a state sealer of weights and measures, providing for a system of weights and measures, regulating the sale of commodities by weight and measure,

providing for enforcement: repealing sections 90-101 through 90-119, 90-120 through 90-129, 90-131, 90-133 through 90-143, 90-145 through 90-152, 90-601 through 90-620, 3-202, 3-2432, 3-2433, 11-958, 50-603, 50-408, 50-409, R. C. M., 1947.

90-154. Systems of weights and measures. The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in the state of Montana. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the national bureau of standards are recognized and shall govern weighing and measuring equipment and transactions in the state.

History: En. Sec. 2, Ch. 99, L. 1969.

90-155. Definitions of special units of measure. The term "barrel" when used in connection with fermented liquor shall mean a unit of thirty-one (31) gallons. The term "ton" shall mean a unit of two thousand (2,000) pounds avoirdupois weight. The term "cord" when used in connection with wood intended for fuel purposes shall mean the amount of wood that is contained in a space of one hundred twenty-eight (128) cubic feet when the wood is ranked and well stowed.

History: En. Sec. 3, Ch. 99, L. 1969.

90-156. State standards of weight and measure. Such weights and measures in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by Montana for use as state standards shall, when the same shall have been certified as being satisfactory for use as such by the national bureau of standards, be the state standards of weight and measure. The state standards shall be kept in a safe and suitable place in the office or laboratory of the state division of weights and measures, they shall not be removed from the said office or laboratory except for repairs or for certification, and they shall be submitted at least once in ten years to the national bureau of standards for certification.

History: En. Sec. 4, Ch. 99, L. 1969.

90-157. Field standards and equipment. In addition to the state standards provided for in section 4 [90-156] of this act, there shall be supplied by the state such "field standards" and such equipment as may be found necessary to carry out the provisions of this act. The field standards shall be verified upon their initial receipt and at least once each year thereafter by comparison with the state standards.

History: En. Sec. 5, Ch. 99, L. 1969.

90-158. State sealer, chief sealer, and deputy sealers of weights and measures. There shall be a state sealer of weights and measures. The commissioner of agriculture shall be, ex officio, the state sealer. There shall be a chief sealer of weights and measures and deputy sealers of weights and measures, and necessary technical and clerical personnel, who shall be appointed by the sealer, and who shall hold office during good behavior, and who shall collectively comprise the state division of weights and measures, of which the chief sealer shall be the head.

History: En. Sec. 6, Ch. 99, L. 1969.

Cross-References

Sealer's position abolished and functions transferred, sec. 82A-402(3).

90-159. General powers and duties of sealer. The sealer shall have the custody of the state standards of weight and measure and of the other standards and equipment provided for by this act, and shall keep accurate records of the same. The sealer shall enforce the provisions of this act. He shall have and keep a general supervision over the weights and measures offered for sale, sold, or in use in the state.

History: En. Sec. 7, Ch. 99, L. 1969.

Cross-References

Functions transferred to department of business regulation, sec. 82A-403(4).

90-160. Specific powers and duties of sealer — regulations. The sealer shall issue from time to time reasonable regulations for the enforcement of this act, which regulations shall have the force and effect of law. These regulations may include (1) schedules of fees for testing and certification, (2) standards of net weight, measure, or count, and reasonable standards of fill for any commodity in package form, (3) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by sealers of weights and measures in the discharge of their official duties, (4) exemptions from the sealing or marking requirements of section 14 [90-166] of this act with respect to weights and measures of such character or size that such sealing or marking would be inappropriate, impracticable, or damaging to the apparatus in question, and (5) rules governing the voluntary registration of servicemen and service agencies. These regulations shall include specifications, tolerances, and other technical requirements for weights and measures of the character of those specified in section 10 [90-162] of this act, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those (1) that are not accurate, (2) that are of such construction that they are faulty (that is, that

are not reasonably permanent in their adjustment or will not repeat their indications correctly), or (3) that facilitate the perpetration of fraud. The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, together with amendments thereto, as recommended by the national bureau of standards and published in national bureau of standards handbook 44 and supplements thereto, or in any publication revising or superseding handbook 44, shall be the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices of the state of Montana, except in so far as specifically modified, amended, or rejected by a regulation issued by the sealer. For the purposes of this act, apparatus shall be deemed to be "correct" when it conforms to all applicable requirements promulgated as specified in this section. Other apparatus shall be deemed to be "incorrect."

History: En. Sec. 8, Ch. 99, L. 1969.

90-160.1. Licensing of weighing devices. No person shall knowingly operate or use any unlicensed weighing devices in trade or commerce for ascertaining the weight of any commodity. Such license shall be obtained by making application to the department of business regulation upon such blank forms to be provided by the division of weights and measures, each license should include at least one (1) inspection per year. Every application shall be accompanied by the proper fee as established by this section.

WEIGHING DEVICES

Capacity	Fees
499 pounds or less -----	\$ 2.50
500 pounds through 1999 pounds -----	4.00
2,000 pounds through 7,999 pounds -----	10.00
8,000 pounds through 40,000 pounds -----	20.00
40,001 pounds or more -----	35.00

The capacity of a weighing device shall be determined by the manufacturer's rated capacity.

All licenses shall be annual and shall expire on December 31.

Any person failing to pay the renewal license fee when due as required by this act shall forfeit the right to use the weighing device, and it shall be taken out of service by the division of weights and measures.

History: En. 90-160.1 by Sec. 1, Ch. 244, L. 1973.

regulation; establishing license fees; and providing an effective date.

Title of Act

An act to prohibit the use of weighing devices in trade or commerce which are not licensed by the division of business

Effective Date

Section 2 of Ch. 244, Laws 1973 read "This act shall be effective January 1, 1974." Approved March 9, 1973.

90-161. Sealer—testing at state-supported institutions. The sealer shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, reporting

his findings, in writing, to the supervisory board and to the executive officer of the institution concerned.

History: En. Sec. 9, Ch. 99, L. 1969.

90-162. Sealer—general testing. When not otherwise provided by law, the sealer shall have the power to inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. It shall be the duty of the sealer, within a twelve-month period, or less frequently if in accordance with a schedule issued by him, and as much oftener as he may deem necessary, to inspect and test, to ascertain if they are correct, all weights and measures commercially used (1) in determining the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or of count, or (2) in computing the basic charge or payment for services rendered on the basis of weight, measure, or of count: Provided, that with respect to single-service devices (that is, devices designed to be used commercially only once and to be then discarded) and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, tests may be made on representative samples of such devices; and the lots of which such samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on such samples: And provided further, that any itinerant peddler or hawker, using weights and measures, shall register his name and address with the chief sealer of weights and measures, in order that his equipment can be tested in accordance with the provisions of this law.

History: En. Sec. 10, Ch. 99, L. 1969.

90-163. Sealer—investigations. The sealer shall investigate complaints made to him concerning violations of the provisions of this act, and shall, upon his own initiative, conduct such investigations as he deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of the provisions of this act and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

History: En. Sec. 11, Ch. 99, L. 1969.

90-164. Sealer—inspection of packages. The sealer shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether the same contain the amounts represented and whether they be kept, offered, or exposed for sale or sold in accordance with law. When such packages or amounts of commodities are found not to contain the amounts represented, or are found to be kept, offered, or exposed for sale in violation of law, the sealer may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the sealer may employ recognized sampling procedures under which the compliance of a given

lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of such lot. No person shall (1) sell, or keep, offer, or expose for sale, in intrastate commerce, any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless and until such package or amount of commodity has been brought into full compliance with all legal requirements, or (2) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner, except with the specific approval of the sealer.

History: En. Sec. 12, Ch. 99, L. 1969.

90-165. Sealer—stop-use, stop-removal, and removal orders. The sealer shall have the power to issue stop-use orders, stop-removal orders, and removal orders with respect to weights and measures being, or susceptible of being, commercially used, and to issue stop-removal orders and removal orders with respect to packages or amounts or commodities kept, offered, or exposed for sale, sold, or in process of delivery, whenever in the course of his enforcement of the provisions of this act he deems it necessary or expedient to issue such orders, and no person shall use, remove from the premises specified, or fail to remove from the premises specified, any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under the authority of this section.

History: En. Sec. 13, Ch. 99, L. 1969.

90-166. Sealer—disposition of correct and incorrect apparatus. The sealer shall approve for use, and seal or mark with appropriate devices, such weights and measures as he finds upon inspection and test to be "correct" as defined in section 8 [90-160] of this act, and shall reject and mark or tag as "rejected" such weights and measures as he finds, upon inspection or test, to be "incorrect" as defined in section 8 [90-160] of this act, but which in his best judgment are susceptible of satisfactory repair: Provided, that, such sealing or marking shall not be required with respect to such weights and measures as may be exempted therefrom by a regulation of the sealer issued under the authority of section 8 [90-160] of this act. The sealer shall condemn, and may seize and destroy, weights and measures found to be incorrect that, in his best judgment, are not susceptible of satisfactory repair. Weights and measures that have been rejected may be confiscated and may be destroyed by the sealer if not corrected as required by section 17 [90-169] of this act, or if used or disposed of contrary to the requirements of section 17 [90-169] of this act.

History: En. Sec. 14, Ch. 99, L. 1969.

90-167. Sealer—police powers—right of entry and stoppage. With respect to the enforcement of this act and any other acts dealing with weights and measures that he is or may be empowered to enforce, the

sealer is hereby vested with special police powers, and is authorized to arrest, without formal warrant, any violator of the said acts, and to seize for use as evidence, without formal warrant, incorrect or unsealed weights and measures or amounts of packages of commodity found to be used, retained, offered, or exposed for sale or sold in violation of law. In the performance of his official duties, the sealer is authorized to enter and go into or upon, without formal warrant, any structure or premises, and to stop any person whatsoever and to require him to proceed, with or without any vehicle of which he may be in charge, to some place which the sealer may specify.

History: En. Sec. 15, Ch. 99, L. 1969.

90-168. Powers and duties of chief sealer and deputy sealers. The powers and duties, given to and imposed upon the sealer by sections 9, 10, 11, 12, 13, 14, 15, and 37 [90-161, 90-162, 90-163, 90-164, 90-165, 90-166, 90-167, and 90-189] of this act are hereby given to and imposed upon the chief sealer and deputy sealers also when acting under the instructions and at the direction of the state sealer.

History: En. Sec. 16, Ch. 99, L. 1969.

90-169. Duty of owners of incorrect apparatus. Weights and measures that have been rejected under the authority of the sealer or of a deputy sealer shall remain subject to the control of the rejecting authority until such time as suitable repair or disposition thereof has been made as required by this section. The owners of such rejected weights and measures shall cause the same to be made correct within thirty (30) days or such longer period as may be authorized by the rejecting authority; or, in lieu of this, may dispose of the same, but only in such manner as is specifically authorized by the rejecting authority. Weights and measures that have been rejected shall not again be used commercially until they have been officially re-examined and found to be correct, or until specific written permission for such use is issued by the rejecting authority, or until the rejection tag has been removed and the rejected device repaired and placed in service by a person duly registered to perform such acts under a regulation issued by the sealer for the registration of weights and measures servicemen and service agencies.

History: En. Sec. 17, Ch. 99, L. 1969.

90-170. Method of sale of commodities—general. Commodities in liquid form shall be sold only [by] liquid measure or by weight, and, except as otherwise provided in this act, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count: Provided, that liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if such methods give accurate information as to the quantity of commodity sold: And provided further, that the provisions of this section shall not apply (1) to commodities when sold for immediate consumption on the premises where sold, (2) to vegetables when sold by the head or bunch, (3) to com-

modities in containers standardized by a law of this state or by federal law, (4) to commodities in package form when there exists a general consumer usage to express the quantity in some other manner, (5) to concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure, or (6) to unprocessed vegetable and animal fertilizer when sold by cubic measure. The sealer may issue such reasonable regulations as are necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest.

History: En. Sec. 18, Ch. 99, L. 1969.

Compiler's Notes

The compiler has inserted the bracketed word "by" in the first sentence.

90-171. Method of sale of commodities—packages—declarations of quantity and origin—variations—exemptions. Except as otherwise provided in this act, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce, shall bear on the outside of the package such definite, plain, and conspicuous declarations of (1) the identity of the commodity in the package unless the same can easily be identified through the wrapper or container, (2) the net quantity of the contents in terms of weight, measure, or count, and (3) in the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by regulation issued by the director: provided, that, in connection with the declaration required under clause (2), neither the qualifying term "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in a package shall be used: And provided further, that under clause (2) the sealer shall, by regulation, establish (a) reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

History: En. Sec. 19, Ch. 99, L. 1969.

90-172. Method of sale of commodities—declarations of unit price on random packages. In addition to the declarations required by section 19 [90-171] of this act, any commodity in package form, the package being one of a lot containing random weights, measures, or counts

of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

History: En. Sec. 20, Ch. 99, L. 1969.

90-173. Method of sale of commodities — misleading packages. No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the sealer.

History: En. Sec. 21, Ch. 99, L. 1969.

90-174. Method of sale of commodities—advertising packages for sale. Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as is required by law or regulation to appear on the package: provided, that, where the law or regulation requires a dual declaration of net quantity to appear on the package, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure (the declaration that is required to appear first and without parenthesis on the package) need appear in the advertisement: And provided further, that there shall not be included as part of the declaration required under this section such qualifying terms as “when packed,” “minimum,” “not less than,” or any other terms of similar import, nor any term qualifying a unit of weight, measure, or count (for example, “jumbo,” “giant,” “full,” and the like) that tends to exaggerate the amount of commodity in the package.

History: En. Sec. 22, Ch. 99, L. 1969.

90-175. Sale by net weight. The word “weight” as used in this act in connection with any commodity shall mean net weight. Whenever any commodity is sold on the basis of weight, the net weight of the commodity shall be employed, and all contracts concerning commodities shall be so construed.

History: En. Sec. 23, Ch. 99, L. 1969.

90-176. Misrepresentation of price. Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style

as, and at last one-half ($\frac{1}{2}$) the height and width of the numerals representing the whole cents.

History: En. Sec. 24, Ch. 99, L. 1969.

90-177. Meat, poultry, and seafood. Except for immediate consumption on the premises where sold, or as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold, all meat, meat products, poultry (whole or parts), and all seafood except shellfish, offered or exposed for sale or sold as food shall be offered or exposed for sale and sold by weight. When meat, poultry, or seafood is combined with or associated with some other food element or elements to form either a distinctive food product or a food combination, such food product or combination shall be offered or exposed for sale and sold by weight, and the quantity representation may be the total weight of the product or combination, and a quantity representation need not be made for each of the several elements of the product or combination.

History: En. Sec. 25, Ch. 99, L. 1969.

90-178. Bread. Each loaf of bread and each unit of a twin or multiple loaf of bread [manufactured] or procured for sale, kept, offered, exposed for sale, or sold, whether or not the bread is wrapped or sliced, shall weigh one-half ($\frac{1}{2}$) pound, one (1) pound, one and one-half ($1\frac{1}{2}$) pounds, or a multiple of one (1) pound, avoirdupois weight, within reasonable variations or tolerances that shall be promulgated by regulation by the sealer: provided, that the provisions of this section shall not apply to biscuits, buns, or rolls weighing eight (8) ounces or less, or to "stale bread" sold and expressly represented at the time of sale as such, and that the marking provisions of section 19 [90-171] shall not apply to unwrapped loaves of bread.

History: En. Sec. 26, Ch. 99, L. 1969.

Compiler's Notes

The compiler has inserted the bracketed word "manufactured" near the beginning of the section.

90-179. Butter, oleomargarine, and margarine. Butter, oleomargarine, and margarine shall be offered and exposed for sale and sold by weight, and only in units of one-fourth ($\frac{1}{4}$) pound, one-half ($\frac{1}{2}$) pound, one (1) pound, or multiples of one (1) pound, avoirdupois weight.

History: En. Sec. 27, Ch. 99, L. 1969.

90-180. Fluid dairy products. All fluid dairy products, including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream, and buttermilk, shall be packaged for retail sale only in units of one (1) gill, one-half ($\frac{1}{2}$) liquid pint, ten (10) fluid ounces, one (1) liquid pint, one (1) liquid quart, one-half ($\frac{1}{2}$) gallon, one (1) gallon, one and one-half ($1\frac{1}{2}$) gallons, two (2) gallons, two and one-half ($2\frac{1}{2}$) gallons, or multiples of one (1) gallon: provided, that packages in units of less than one (1) gill shall be permitted.

History: En. Sec. 28, Ch. 99, L. 1969.

90-181. Flour, corn meal, and hominy grits. When in package form, and when packed, kept, offered, or exposed for sale or sold, wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, corn meal, and hominy grits shall be packaged only in units of two (2), five (5), ten (10), twenty-five (25), fifty (50), or one hundred (100) pounds, avoirdupois weight: provided, that packages in units of less than two (2) pounds or more than one hundred (100) pounds shall be permitted.

History: En. Sec. 29, Ch. 99, L. 1969.

90-182. Bulk deliveries sold in terms of weight and delivered by vehicle. When a vehicle delivers to an individual purchaser a commodity in bulk, and the commodity is sold in terms of weight units, the delivery shall be accompanied by a duplicate delivery ticket with the following information clearly stated, in ink or by means of other indelible marking equipment and, in clarity, equal to type or printing, (1) the name and address of the vendor, (2) the name and address of the purchaser, and (3) the net weight of the delivery expressed in pounds, and, if the net weight is derived from determinations of gross and tare weights, such gross and tare weights also shall be stated in terms of pounds. One of these tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or shall be surrendered, on demand, to the sealer, or the chief sealer or deputy sealer, who, if he desires to retain it as evidence, shall issue a weight slip in lieu thereof for delivery to the purchaser: provided, that, if the purchaser, himself, carries away his purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to him.

History: En. Sec. 30, Ch. 99, L. 1969.

90-183. Furnace and stove oil. All furnace and stove oil shall be sold by liquid measure or by net weight in accordance with the provisions of section 18 [90-170] of this act. In the case of each delivery of such liquid fuel not in package form and in an amount greater than ten (10) gallons in the case of sale by liquid measure or one hundred (100) pounds in the case of sale by weight, there shall be rendered to the purchaser, either (a) at the time of delivery or (b) within a period mutually agreed upon in writing or otherwise between the vendor and the purchaser, a delivery ticket or a written statement on which, in ink or by means of other indelible marking equipment and, in clarity, equal to type or printing, there shall be clearly stated (1) the name and address of the vendor, (2) the name and address of the purchaser, (3) the identity of the type of fuel comprising the delivery, (4) the unit price (that is, the price per gallon or per pound, as the case may be) of the fuel delivered, (5) in the case of sale by liquid measure, the liquid volume of the delivery, together with any meter readings from which such liquid volume has been computed, expressed in terms of the gallon and its

binary or decimal subdivisions, and (6) in the case of sale by weight, the net weight of the delivery, together with any weighing scale readings from which such net weight has been computed, expressed in terms of tons or pounds avoirdupois.

History: En. Sec. 31, Ch. 99, L. 1969.

90-184. Berries and small fruits. Berries and small fruits shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of one-half ($\frac{1}{2}$) dry pint, one (1) dry pint, or one (1) dry quart: provided, that the marking provisions of section 19 [90-171] of this act shall not apply to such containers.

History: En. Sec. 32, Ch. 99, L. 1969.

90-185. Construction of contracts. Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of such unit as prescribed or defined in sections 2 and 3 [90-154 and 90-155] of this act, and all contracts concerning the sale of commodities and services shall be construed in accordance with this requirement.

History: En. Sec. 33, Ch. 99, L. 1969.

90-186. Hindering or obstructing officer—penalties. Any person who shall hinder or obstruct in any way the sealer, the chief sealer, or any one of the deputy sealers, in the performance of his official duties shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty dollars (\$20.00) or more than two hundred dollars (\$200.00), or by imprisonment for not more than three (3) months, or by both such fine and imprisonment.

History: En. Sec. 34, Ch. 99, L. 1969.

90-187. Impersonation of officer—penalties. Any person who shall impersonate in any way the sealer, the chief sealer, or any one of the deputy sealers, by the use of his seal or a counterfeit of his seal, or in any other manner, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

History: En. Sec. 35, Ch. 99, L. 1969.

90-188. Offenses and penalties. Any person who, by himself, or by his servant or agent, or as the servant or agent of another person, performs any one of the acts enumerated in subparagraphs (1) through (9) of this section shall be guilty of a misdemeanor and, upon a first conviction thereof, shall be punished by a fine of not less than twenty dollars (\$20.00) or more than two hundred dollars (\$200.00), or by imprisonment for not more than three (3) months, or by both such fine and imprisonment. Upon a second or subsequent conviction thereof, he shall be punished by a fine of not less than fifty dollars (\$50.00) or more

than five hundred dollars (\$500.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(1) Use or have in possession for the purpose of using for any commercial purpose specified in section 10 [90-162], sell, offer, or expose for sale or hire, or have in possession for the purpose of selling or hiring, an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure.

(2) Use, or have in possession for the purpose of current use for any commercial purpose specified in section 10 [90-162], a weight or measure that does not bear a seal or mark such as is specified in section 14 [90-166], unless such weight or measure has been exempted from testing by the provisions of section 10 [90-162] or by a regulation of the sealer issued under the authority of section 8 [90-160], or unless the device has been placed in service as provided by a regulation of the sealer issued under the authority of section 8 [90-160] of this act: provided, that, any person or persons making use of weighing or measuring devices subject to this act must report to the sealer of weights and measures or his deputies, in writing, the number and location of said weighing or measuring device and must promptly report the installation of any new weighing or measuring device.

(3) Dispose of any rejected or condemned weight or measure in a manner contrary to law or regulation.

(4) Remove from any weight or measure, contrary to law or regulation, any tag, seal, or mark placed thereon by the appropriate authority.

(5) Sell, or offer or expose for sale, less than the quantity he represents of any commodity, thing, or service.

(6) Take more than the quantity he represents of any commodity, thing, or service, when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined.

(7) Keep for the purpose of sale, advertise, or offer or expose for sale, or sell any commodity, thing, or service in a condition or manner contrary to law or regulation.

(8) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer.

(9) Violate any provision of this act or of the regulations promulgated under the provisions of this act for which a specific penalty has not been prescribed.

History: En. Sec. 36, Ch. 99, L. 1969.

Conduct Amounting to False Pretenses

Misdemeanors under former Packaged Commodities Offered for Sale Act and former False Weight and Measures Act were not lesser included offenses of felony of obtaining money by false pretenses since above acts required "sale" while

felony statute does not; state has discretionary power to choose under which law it will charge defendant and the fact that two statutes overlap in prohibiting same act does not mean that the defendant can only be prosecuted under statute providing lesser penalty. *State v. Lagerquist*, 152 M 21, 445 P 2d 910.

90-189. Injunction. The sealer is authorized to apply to any court of competent jurisdiction for, and such court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining any person from violating any provision of this act.

History: En. Sec. 37, Ch. 99, L. 1969.

90-190. Presumptive evidence. For the purposes of this act, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, inclosure, stand, or vehicle in which or from which is shown that buying or selling is commonly carried on, shall, in the absence of conclusive evidence to the contrary, be presumptive proof of the regular use of such weight or measure or weighing or measuring device for commercial purposes and of such use by the person in charge of such building, inclosure, stand, or vehicle.

History: En. Sec. 38, Ch. 99, L. 1969.

90-191. Validity of prosecutions. Prosecutions for violation of any provision of this act are declared to be valid and proper, notwithstanding the existence of any other valid general or specific act of this state dealing with matters that may be the same as or similar to those covered by this act.

History: En. Sec. 39, Ch. 99, L. 1969.

90-192. Separability provision. If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby.

History: En. Sec. 40, Ch. 99, L. 1969.

90-193. Repeal of conflicting laws. All laws and parts of laws contrary to or inconsistent with the provisions of this act are hereby repealed.

History: En. Sec. 41, Ch. 99, L. 1969.

90-194. Citation. This act may be cited as the "Weights and Measures Act of Montana."

History: En. Sec. 42, Ch. 99, L. 1969.

Repealing Clause

Section 43 of Ch. 99, Laws 1969 read
"Sections 90-101 through 90-119, 90-120

through 90-129, 90-131, 90-133 through 90-143, 90-145 through 90-152, 90-601 through 90-620, 3-202, 3-2432, 3-2433, 11-958, 50-603, 50-408, 50-409, R. C. M., 1947, are repealed."

CHAPTER 2—APPLES, GRADES AND BOXES

Section 90-201 to 90-206. [Transferred.]

90-201 to 90-206. [Transferred.]

Compiler's Notes

Sections 171 and 172, Ch. 218, Laws of

1974 renumbered these sections as secs. 3-3402 to 3-3407.

CHAPTER 3—BREAD—STANDARD WEIGHT AND LOAF

(Repealed—Section 3, Chapter 252, Laws of 1957; Section 24, Chapter 16, Laws of 1965; Section 27, Chapter 307, Laws of 1967)

90-301. (4273) Repealed.

Repeal

This section (Sec. 1, Ch. 155, L. 1919; Sec. 2, Ch. 252, L. 1957), relating to stand-

ard weights for bread, was repealed by Sec. 24, Ch. 160, Laws 1965. For present law, see sec. 90-178.

90-301.1. Repealed.

Repeal

This section (Sec. 1, Ch. 252, L. 1957), relating to the manufacture of bakery

products, was repealed by Sec. 27, Ch. 307, Laws 1967.

90-304. (4276) Repealed.

Repeal

This section (Sec. 4, Ch. 155, L. 1919), relating to the violation of laws pertain-

ing to the manufacture and sale of bread, was repealed by Sec. 27, Ch. 307, Laws 1967.

CHAPTER 6—PACKAGED COMMODITIES OFFERED FOR SALE

Section 90-621. Supplement clause.

90-601 to 90-620. Repealed.

Repeal

Sections 90-601 to 90-620 (Secs. 1 to 20, Ch. 160, L. 1965), relating to packaged commodities offered for sale, were

repealed by Sec. 43, Ch. 99, Laws 1969. For present law, see secs. 90-153, 90-163 to 90-165, 90-167, 90-170 to 90-178, 90-184 to 90-186, 90-188 and 90-189.

90-621. Supplement clause. This act is intended to be supplementary, and is not intended to repeal sections 90-140 and 90-141, R. C. M. 1947, or any other law relating to weights and measures.

History: En. Sec. 23, Ch. 160, L. 1965.

Repealing Clause**Compiler's Notes**

Sections 90-140 and 90-141, referred to in this section, were repealed by Sec. 43, Ch. 99, Laws 1969.

Section 24 of Ch. 160, Laws 1965 read "Repealing section. Sections 90-130, 90-132, 90-144 and 90-301, R. C. M. 1947, are repealed."

CHAPTER 7—PAINTS—LABELING—LABORATORY ANALYSIS

Section 90-701. Intrastate transactions with paints, etc.—label—contents of label.

90-702. Enforcement of chapter.

90-703. Designation of laboratory for analysis—report of analysis.

90-704. County attorney—duties regarding chapter.

90-705. Possession as prima facie evidence.

90-706. Penalty for violations.

90-701. Intrastate transactions with paints, etc.—label—contents of label. A person, firm, or corporation, who manufactures for sale, sells, offers for sale, or ships in intrastate transactions within the state, any paint, mixed paint, paste paint, or compound intended for use as paint, or any varnish, decorative protective coatings, or additives for wood, metal, concrete, or roof coatings, but excluding artists' colors, waxes, and

polishes, shall label it in a clear and distinct manner. The label shall recite a full analysis of the content with a specification of pigment and vehicle, including the analysis by percentage of the pigment content and the analysis by percentage of the vehicle content. The label shall further recite the name and address of the manufacturer or distributor of the product. The analysis and composition may be inspected by the chief chemist of a laboratory designated by the department of business regulation.

History: En. Sec. 1, Ch. 69, L. 1959; Sec. 3-1510, R. C. M. 1947; amd. and redes. 90-701 by Sec. 80, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "department of business regulation" at the end of the section for "department of agriculture"; and made minor changes in phraseology and punctuation.

90-702. Enforcement of chapter. The department of business regulation shall enforce this chapter. The department shall have access to all places of business, factories, stores, and buildings used for the manufacture or sale of paints or other products described in section 90-701. The department may purchase and open any package, can, jar, tub, or other receptacle containing any of the articles described in section 90-701 and found during an inspection.

History: En. Sec. 4, Ch. 69, L. 1959; Sec. 3-1513, R. C. M. 1947; amd. and redes. 90-702 by Sec. 83, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted references to "department of business regulation" for references to "department of agriculture and its appointed agents or assistants"; and made minor changes in phraseology and punctuation.

90-703. Designation of laboratory for analysis—report of analysis. The department of business regulation shall designate the laboratory where analysis of the products described in section 90-701 shall be made. When products are found to be in violation of this chapter, the chief chemist of the laboratory designated by the department shall report the facts to the department. A certificate signed by the chief chemist of the laboratory relating to the analysis of any of the products mentioned in section 90-701 is presumptive evidence of the facts stated in it.

History: En. Sec. 5, Ch. 69, L. 1959; Sec. 3-1514, R. C. M. 1947; amd. and redes. 90-703 by Sec. 84, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted references to "department of business regulation" for references to "department of agriculture"; and made minor changes in phraseology.

90-704. County attorney—duties regarding chapter. The county attorney of the county where the violation of this chapter occurred, shall prosecute every person, firm, or corporation violating this chapter when the evidence of the violation has been presented by the chief chemist of the laboratory making the analysis.

History: En. Sec. 6, Ch. 69, L. 1959; Sec. 3-1515, R. C. M. 1947; amd. and redes. 90-704 by Sec. 85, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology.

90-705. Possession as prima facie evidence. The possession, either constructive or actual, by a person, firm, or corporation dealing in the articles or substances described in section 90-701 and not properly labeled as provided by section 90-701, is prima facie evidence that those articles or substances are kept for sale in violation of this chapter.

History: En. Sec. 3, Ch. 69, L. 1959;
Sec. 3-1512, R. C. M. 1947; amd. and redes.
90-705 by Sec. 82, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology and punctuation.

90-706. Penalty for violations. A person, firm, or corporation who violates this chapter shall be prosecuted and fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) and all costs, including cost of analysis to the amount of twenty-five dollars (\$25) or shall be imprisoned in the county jail for not more than sixty (60) days.

History: En. Sec. 2, Ch. 69, L. 1959;
Sec. 3-1511, R. C. M. 1947; amd. and redes.
90-706 by Sec. 81, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology.

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